

THE PUBLIC HEALTH
(LONDON) ACT

1891.



MACMORRAN

THE METROPOLIS

Local Management Acts,

550G

TO WHICH IS ADDED

AN APPENDIX,

CONTAINING OTHER STATUTES RELATING TO THE POWERS AND
DUTIES OF THE METROPOLITAN BOARD OF WORKS,
VESTRIES, AND DISTRICT BOARDS OF THE
METROPOLIS.

WITH

TABLE OF CASES, NOTES, AND INDEX.

BY THE LATE

EDMUND HUMPHREY WOOLRYCH, Esq.,

Sometime one of the Metropolitan Police Magistrates.

THIRD EDITION.

BY

LIONEL GOODRYCH,

Of the Middle Temple, Barrister-at-Law.

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LONDON, E.C.

*All requisite Forms for the various purposes of Local Government
kept in Stock.*



THE

Public Health (London)

ACT, 1891.

WITH INTRODUCTION, NOTES, AND INDEX.

BY

ALEXANDER MACMORRAN, M.A.,

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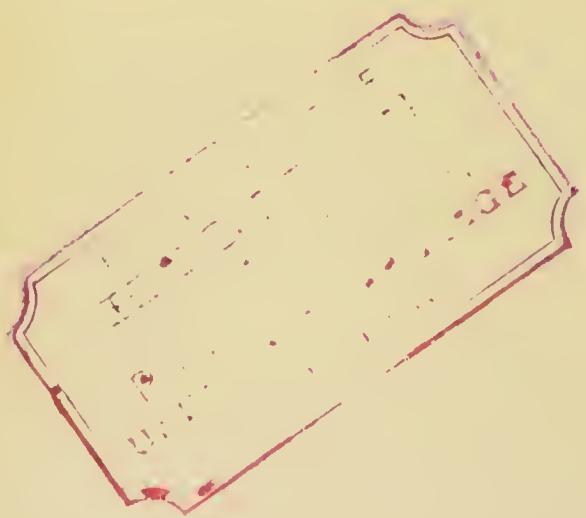
P R E F A C E.

IN preparing this Edition of the Public Health (London) Act, 1891, the Editor has generally indicated under each sub-section the previous enactment (if any) on the same subject, and has endeavoured to point out any changes in the new enactment. He has also referred to the corresponding provisions of the Public Health Act, 1875, and compared them with the new Act. It is believed that all cases which would throw any light on the construction of the new Act have been cited. Some which are no longer applicable, by reason of a change in the law, have been mentioned for the better elucidation of the text.

The Editor is indebted to Mr. M. S. J. Macmorran, of the Middle Temple, Barrister-at-Law, for the Digest of Cases and other valuable assistance. The Index has been prepared by Mr. Sidney Wright, of the Northern Circuit.

A. M.

September, 1891.



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INTRODUCTION.

THE Public Health (London) Act, 1891, is intended to do for the Metropolis what the Public Health Act, 1875, did for the rest of the country. It repeals a large number of statutes formerly in force in the Metropolis relating to the public health. It consolidates these with amendments, so that now there may be said to be a sanitary code applicable to the Metropolis. The Act applies to London, that is to say, to the administrative county of London forming the area under the jurisdiction of the London County Council. That area includes the City, and the parishes and districts enumerated in the schedules to the Metropolis Management Act, 1855.

The authorities for the execution of the Act (therein described as the sanitary authorities) comprise, in the City of London, the Commissioners of Sewers; in the parishes enumerated in Schedule (A.) of the Act of 1855, the vestries; in the districts enumerated in Schedule (B.) of the same Act, the district boards; and in the parish of Woolwich, the local board. A word or two may be said with reference to each of these authorities. The Commissioners of Sewers of the City of London are persons appointed by the Corporation, or rather by the Common Council of the City, under 11 & 12 Vict. c. 163. Under that Act they have various sanitary powers and

duties. Under the Public Health (London) Act, they have all the duties of a sanitary authority. But they are singular in this respect, that they are to a large extent, if not altogether, free from the control which the London County Council exercises over other sanitary authorities. For example, the bye-laws made by the County Council do not extend to the City, nor have the County Council power to act in case of default on the part of the commissioners in carrying into execution the provisions of the Act. Vestries and district boards are those appointed under the Metropolis Management Acts ; vestries being the sanitary authority in the larger parishes ; district boards being the sanitary authority in the several combinations of parishes under these Acts. The local board of Woolwich occupies a singular position. It was created a local board district by provisional order, which was confirmed by 15 & 16 Vict. c. 69. The local board had all the powers and duties of a local board under the Public Health Acts and the Nuisances Removal Acts, but being included in the Metropolis for certain purposes under 18 & 19 Vict. c. 120, it was excluded from the operation of the Public Health Act, 1875. For public health purposes, therefore, it was in much the same position as a vestry or district board in the Metropolis. In future, it will practically be made a local board under the Public Health Acts, and the Public Health (London) Act.

With regard to the state of the law before the passing of the present Act, it is unnecessary to go further back than the year 1855, when the first of the Metropolis Local Management Acts was passed, and it may be sufficient

here to say that the vestries and district boards created by that Act were the bodies which were entrusted with the execution of the Nuisances Removal and Diseases Prevention Acts which were afterwards passed from time to time. They were, as they now are, sanitary authorities. Thus, it was provided by 18 & 19 Vict. c. 120, s. 134, that every vestry and district board under that Act should execute within their respective parish or district all powers and duties exercisable under the Nuisances Removal and Diseases Prevention Acts. These powers and duties they still exercise under the name of the sanitary authority, but with this difference, that the old Acts are all repealed, consolidated, and amended into one statute.

An important feature in the new statute consists in the new powers and duties entrusted to the County Council. That body succeeded, under the Local Government Act, 1888, to the powers of the Metropolitan Board of Works, but under the new Act their powers are very considerably extended. They can make bye-laws for many purposes, and the sanitary authorities outside the City must enforce them, and to them is entrusted the power of taking action in the event of any default made by any sanitary authority other than the Commissioners of Sewers.

With regard to the Act itself, it is not necessary to attempt a full description of its contents, but some of the principal amendments of the law which it affects may here be mentioned. The first part of the Act deals with nuisances; first, with nuisances generally, and, secondly, with some particular nuisances. Under the same head, offensive trades are dealt with, and it is important to

notice that in future no one will be able to establish anew in the Metropolis the business of a blood boiler, bone boiler, manure manufacturer, tallow melter, or knacker, or (except in one event) soap boiler, under any circumstances ; while for other offensive trades the sanction of the County Council is necessary. Under the same head of nuisances may be mentioned the consolidation of the Acts relating to the consumption of smoke. These are repeated with very slight alteration. The Act then deals with workshops and bakehouses, and provides for certain sanitary conditions therein. It places dairies in the Metropolis in the same position as they are throughout the rest of the country, enabling the Local Government Board to make Orders for the registration and inspection of dairies, for securing the cleanliness of milk vessels, and for prescribing precautions to be taken for protecting the milk against infection. The next part of the Act deals with the removal of refuse, and the most important change in that part is that which abolishes the duties formerly incumbent upon the owners or occupiers of premises to cause the footways and watercourses adjoining their premises to be swept or cleansed in time of snow or the like. The next part of the Act relates to water-closets and sanitary conveniences. In this part one of the most important changes is that which requires a new house to be provided with as many water-closets as circumstances may require ; and another is, that which enables the sanitary authority to provide public lavatories as well as other sanitary conveniences. In the section which deals with unsound food the law is assimilated to that now in force throughout the rest of the country under the Public Health Act, 1890. The

powers of medical officers and sanitary inspectors as to unsound food are now extended to every article of food, and not as formerly, to articles enumerated in a long and defective list, a list which, it may be mentioned, omitted such important articles of food as eggs, butter, and cheese. Another matter worthy of attention under the same heading is, that a person who has been twice convicted within twelve months of selling unsound food may, in addition to his punishment, be pilloried by having a notice affixed to his premises of the facts upon which he has been convicted.

Under the heading of the provisions as to water there are one or two very important and novel provisions. One of these is, that if a water company cut off the supply of water from any dwelling-house, they must give notice to the sanitary authority. Another is, that which relates to the cleansing of cisterns containing drinking water. The provisions of the Act relating to the notification of infectious diseases are much the same as those contained in the Act of 1889, which will no longer apply to London. But one very important amendment of the law in this part of the Act may be noticed ; it is that which requires the medical officer of health, upon receipt of a notice of infectious disease, to send to the head teacher of the school attended by the patient (if a child), or by any child who is an inmate of the same house as the patient, a copy of the notice. This enactment will, doubtless, have very considerable effect in checking the spread of infectious disease. Under the title of infectious diseases prevention there is very little change, the provisions of the several sanitary Acts, and of

the Infectious Disease Prevention Act of 1890, being simply repeated. The same applies to those portions of the Act dealing with hospitals, ambulances, and the prevention of epidemic diseases. Under the head of mortuaries some changes are to be noticed. In the first place, every sanitary authority must now provide a mortuary for themselves, or in combination with another sanitary authority. They may also—but that is discretionary—provide a place for *post-mortem* examinations. The County Council must provide proper places for the holding of inquests, and the same body may provide one or more places, like the Morgue in Paris, for the retention and preservation of dead bodies found in London and not identified. Some very important changes in the Act fail to be noticed under the head of underground rooms. For details of these changes the reader is referred to the notes in this Work to section 96. It may be mentioned here, however, that a new departure is taken after the 5th August, 1891, when the Act passed. Underground rooms, not separately used as dwellings before that date, may not be so used in future, unless they fulfil certain enumerated conditions. With regard to underground rooms which were occupied as dwellings before that date, these must fulfil the same conditions after the lapse of six months from the 1st of January next, except to such extent as the sanitary authority may permit a modification or dispensation of these requirements.

In the event of default being made by a sanitary authority other than the Commissioners of Sewers in the execution of the Act, the County Council are empowered to take their place, do what is necessary, and recover the

expenses from the sanitary authority, or the County Council, instead of themselves acting, may apply to the Local Government Board and obtain from that body an order requiring the performance by the sanitary authority of the duty in respect of which they have made default. It is unnecessary to mention the details of procedure. It is sufficient to observe that the Act provides carefully for the enforcement of their duties by the several sanitary authorities, and with regard to the Commissioners of Sewers, although the County Council have not power to act in their default; yet provision is made by which the Local Government Board can enforce even as against them the performance of their duties under the Act. Among the several sections relating to legal proceedings may be mentioned that which makes a defendant charged with an offence, and the wife or husband of such defendant a competent and compellable witness.

A perusal of the Fourth Schedule will inform the reader of the Acts which are repealed, consolidated, and amended by the present Act. The most important Acts which are repealed are those which relate to nuisances removal and the prevention of diseases; but portions of other Acts, such as Michael Angelo Taylor's Act and the Metropolis Management Acts, dealing with sanitary matters, are also repealed and replaced with or without amendments. The Act is a useful one were it only in that it is a consolidation Act, but it embodies many valuable changes in the law relating to public health.

THE PUBLIC HEALTH (LONDON) ACT, 1891.

54 & 55 VICT. CAP. 76.

AN ACT to consolidate and amend the Laws relating to Public Health in London.

[5th August, 1891.]

BE it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

1. It shall be the duty of every sanitary authority to cause to be made from time to time inspection of their district, with a view to ascertain what nuisances exist calling for abatement under the powers of this Act, and to enforce the provisions of this Act for the purpose of abating the same, and otherwise to put in force the powers vested in them relating to public health and local government, so as to secure the proper sanitary condition of all premises within their district.

This section is a re-enactment in substance of 29 & 30 Vict. c. 90, s. 20, and 48 & 49 Vict. c. 72, s. 7, repealed by this Act. The case of *Ex parte Bassett, In re West Ham Local Board*, 7 E. & B. 280; 26 L. J. M. C. 64; 28 L. T. (O.S.) 267; 3 Jur. (N.S.) 136; 21 J. P. 85, was decided before the date of these enactments.

SECT. 1. The first part of the section is identical with section 92 of the Public Health Act, 1875.

Note.

It may be mentioned that by section 32 of the Housing of the Working Classes Act, 1890 (53 & 54 Vict. c. 70), it is provided that it shall be the duty of every local authority to cause to be made from time to time inspection of their district, with a view to ascertain whether any dwelling-house therein is in a state so dangerous or injurious to health as to be unfit for human habitation.

If the sanitary authority make default in the performance of the duty imposed upon them by this section, the county council may, under section 100, do what is necessary and recover the expenses from the sanitary authority; or the county council may complain to the Local Government Board under section 101, and the Local Government Board will then enforce the performance of the duty in manner therein provided.

For the definition of a "sanitary authority," see section 99, *post.*

*Nuisances
(General).*
What
nuisances
may be
abated
summarily.

Nuisances (General).

2.—(1) For the purposes of this Act,—

- (a.) Any premises (a) in such a state as to be a nuisance or injurious or dangerous to health; (b)
- (b.) Any pool, ditch, gutter, watercourse, cistern, water-closet, earth-closet, privy, urinal, cess-pool, drain, dung-pit, or ash-pit so foul, or in such a state as to be a nuisance or injurious or dangerous to health; (c)
- (c.) Any animal kept in such place or manner as to be a nuisance or injurious or dangerous to health; (d)
- (d.) Any accumulation or deposit which is a nuisance or injurious or dangerous to health; (e)
- (e.) Any house or part of a house so overcrowded as to be injurious or dangerous to the health of the inmates, whether or not members of the same family; (f)

DEPARTMENT OF
HYGIENE
AND
PUBLIC HEALTH,

3

(f.) Any such absence from premises of water-fittings ~~UNIVERSITY OF LONDON~~ Sect. 2, as is a nuisance by virtue of section thirty-
three of the Metropolis Water Act, 1871, set ~~1871~~ Viet. out in the First Schedule to this Act; (g.) and c. 113.

(g.) Any factory, workshop, or workplace which is not a factory subject to the provisions of the Factory and Workshop Act, 1878, relating to cleanliness, ventilation, and overcrowding, (h.) and Viet. c. 16.

- (i.) Is not kept in a cleanly state and free from effluvia arising from any drain, privy, earth-closet, water-closet, urinal, or other nuisance, or
- (ii.) Is not ventilated in such a manner as to render harmless as far as practicable any gases, vapours, dust, or other impurities generated in the course of the work carried on therein that are a nuisance or injurious or dangerous to health, or
- (iii.) Is so overcrowded while work is carried on as to be injurious or dangerous to the health of those employed therein,

shall be nuisances liable to be dealt with summarily under this Act.

(a) For the definition of the expression "premises," see section 141, *post*. See also section 95, *post*, as to tents, vans, &c., used for human habitation, and section 110, *post*, as to ships.

(b) It has been held that the corresponding provisions of the Public Health Act, 1875, s. 91, do not apply to a nuisance arising from sewage tanks and works constructed under that Act by a local board, and that a court of summary jurisdiction had, therefore, no power, on proof of a nuisance so caused, to make an order for the abatement of the nuisance: *Reg. v. Parlby*, 22 Q. B. D. 520; 58 L. J. M. C. 49; 60 L. T. (N.S.) 422; 37 W. R. 335; 53 J. P. 327; 5 T. L. R. 257. In the course of

SECT. 2. his judgment, WILLS, J., referring to the clause of the Public Health Act, 1875, corresponding to clause (a.) of this sub-section, said: "It is clear that the expression 'premises in such a state as to be a nuisance,' has not the wide application claimed for it by the respondents, who say that it is answered by any premises on which a nuisance exists. If that were so, the enumeration of, at all events, the several kinds of nuisance specified under the subsequent heads would be unnecessary; we do not attempt to define every class of ease to which the first head applies, but we think it is confined to cases in which the premises themselves are decayed, dilapidated, dirty, or out of order, as, for instance, where houses have been inhabited by tenants whose habits and ways of life have rendered them filthy or impregnated with disease, or where foul matter has been allowed to soak into walls or floors, or where they are so dilapidated as to be a source of danger to life or limb."

Upon similar words in 18 & 19 Vict. c. 121, s. 10, it was held that the percolation and dripping of water from a railway bridge on to the road beneath was not a nuisance within the Act: *Great Western Railway v. Bishop*, L. R. 7 Q. B. 550; 41 L. J. M. C. 120; 26 L. T. (N.S.) 905; 20 W. R. 969; 37 J. P. 5. But though the word nuisance, as used in this section, does not include every common law nuisance, it is not necessary that a nuisance, in order to be within this Act, should also be injurious to health, inasmuch as the terms are disjunctive, nuisance *or* injurious. It is sufficient if the nuisance is one which interferes with personal comfort, per STEPHEN, J., in *The Bishop Auckland Local Board v. The Bishop Auckland Iron Company*, 10 Q. B. D. 138; 52 L. J. M. C. 38; 31 W. R. 288; 48 L. T. (N.S.) 223; 47 J. P. 389. In that case an accumulation or deposit of cinders, ashes, and refuse, which were allowed to smoulder and throw off strong fumes or effluvia, were held to be a nuisance and within the corresponding words of section 91 of the Public Health Act, 1875, though it was not injurious to health. Similar decisions were given upon similar words in sections 47 and 114 of that Act. See *Banbury Sanitary Authority v. Page*, 8 Q. B. D. 97; 51 L. J. M. C. 21; 45 L. T. (N.S.) 759; 30 W. R. 415; 46 J. P. 184; *Malton Board of Health v. Malton Farmers' Manure Company*, 4 Ex. D. 302; 49 L. J. M. C. 90; 40 L. T. (N.S.) 755; 27 W. R. 802; 44 J. P. 155; *Houldershaw v. Martin*, 49 J. P. 179; 1 T. L. R. 323.

The words of the clause are "premises in such a state," &c. It would appear, therefore, that they apply only to premises which, but for their condition, would not be a nuisance, and not to premises which are a nuisance by reason of the purposes for which they are used. Thus, it is

submitted that they would not apply to premises used simply for an offensive trade so long as the condition of the premises was not in question (see section 19, *post*, as to offensive trades). Nor would they apply to a building which was a nuisance only by reason of its being used as a hospital for infectious diseases, as in *Metropolitan Asylums District v. Hill*, 6 App. Cas. 193; 50 L. J. Q. B. 353; 44 L. T. (N.S.) 653; 29 W. R. 617; 45 J. P. 664; *Bendelow v. Guardians of Wortley Union*, 4 T. L. R. 67. On the other hand, it is submitted that a house which is a nuisance by reason of its being ruinous and likely to fall down might be a nuisance within this section. A house in such a condition may be a nuisance at common law: *Reg. v. Watts*, 1 Salv. 357. And see *Chauntler v. Robinson*, 4 Ex. 163; *Leslie v. Pounds*, 4 Taunt. 649; *Silverton v. Marriott*, 59 L. T. (N.S.) 61; 52 J. P. 677. As to the liability of a person for allowing premises to be out of repair, and so a nuisance whereby injury is caused, see *Payne v. Rogers*, 2 H. Bla. 350; *Todd v. Flight*, 9 C. B. (N.S.) 377; 30 L. J. C. P. 21; *Gandy v. Jubber*, 9 B. & S. 15; 13 W. R. 1022; *Pretty v. Bickmore*, L. R. 8 C. P. 401; 28 L. T. (N.S.) 704; 21 W. R. 733; 37 J. P. 552; *Nelson v. Liverpool Brewery Company*, 2 C. P. D. 311; 46 L. J. C. P. 675; 25 W. R. 877; *Gwinnell v. Eamer*, L. R. 10 C. P. 658; 32 L. T. (N.S.) 835; *Sandford v. Clarke*, 21 Q. B. D. 398; 57 L. J. Q. B. 507; 59 L. T. (N.S.) 226; 37 W. R. 28; 52 J. P. 773.

In some cases of nuisances which might fall within this clause another remedy may be found under the bye-laws made under section 16, *post*.

(c) This clause is taken from 18 & 19 Vict. c. 121, s. 8, with the addition of the words "cistern, water-closet, earth-closet, . . . dung-pit." These words do not occur in the corresponding clause of the Public Health Act, 1875, s. 91.

See section 16, *post*, as to bye-laws for preventing nuisances from offensive matter running out of any manufactory, &c., closing of cess-pools and privies, disposal of refuse, &c.; and section 39 as to bye-laws with respect to water-closets, &c. See also sections 41 and 42, *post*.

It should be observed that the clause does not refer to a sewer, but only to a drain. See per *WILLS*, J., in *Reg. v. Parlby, supra*. There is no definition of a drain in this Act, but it would probably be held to have the same meaning as in the Metropolis Management Act, 1855. That Act provides by section 250 that the word "drain" shall mean and include any drain of and used for the drainage of one building only, or premises within the same curtilage, and made merely for the purpose of communicating with a cesspool or other like receptacle for drainage, or with a sewer into which the drainage of two or more buildings or

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Note.

The owner and occupier of a house within a sanitary district was summoned at petty sessions by the sanitary authority for causing the water-closet attached to the house to discharge night-soil into the water channel under the main street of N., a town within the district, causing a dangerous nuisance. It was proved that the channel or drain in question was, from its size and from having a gravel bottom, unsuited to receive and carry off faecal matter, and was only intended to carry off surface water. There was no other sewer in N. into which the sewage from the houses could be discharged, but the sanitary authority had made arrangements for the carting away of sewage weekly. There was no evidence of any nuisance on the defendant's premises, but it appeared that the drain or channel was in a most offensive state ; and the justice being satisfied that a nuisance existed ordered the defendant to disconnect the soil-pipe of the water-closet with the drain in the main street, so as to prevent any deposit or accumulation from the water-closet being discharged into the drain. On a case stated :—Held (*diss.* DOWSE, B.), that the justice's order was wrong and should be quashed : *Molloy v. Gray*, 24 L. R. Ir. 258.

An owner of a public-house erected a urinal in a private passage leading out of the street, and enclosed it between doors, which he kept locked at night. There was a space between the line of area railings in the street and the urinal door nearest to the street, which space he shut off from the street with an iron gate placed flush with the line of railings. This gate was never locked. It was proved that persons habitually used the space between the door and the gate in such a manner as to cause to the neighbours a nuisance, which he took no steps to prevent :—Held, by KAY, J., that he was responsible for such user, it being a probable consequence of the manner in which he had arranged the premises : *Chibnall v. Paul & Son*, 29 W. R. 536.

The appellants were possessed of chemical works at H., and were entitled to discharge refuse by two separate drains into a public sewer. By the one drain liquid impregnated with muriatic acid was discharged, and by the other drain liquid impregnated with sulphur. Upon their combination in the sewer sulphuretted hydrogen gas was produced, which escaped in sufficient quantities to be injurious to the public health. No

nuisance existed in the appellants' drains. The respondents had not properly flushed, cleansed, and trapped the sewer. Complaint having been made by the respondents of the escape of the sulphuretted hydrogen gas, an order for the abatement therof was made by justices on the appellants:—Held, that the escape of the gas was a nuisance within the meaning of the corresponding provisions of 18 & 19 Vict. c. 121, s. 8, that it arose from the acts of the appellants, and that the respondents could lawfully make complaint thereof, although they themselves might have contributed to the existence of the nuisance: *St. Helen's Chemical Company v. Corporation of St. Helens*, 1 Ex. D. 196; 45 L. J. M. C. 150; 34 L. T. 397; 40 J. P. 471. It is to be observed that this decision was given with reference to 18 & 19 Vict. c. 121, which contains no definition of drain or sewer.

(d) See the proviso in the next sub-section. See also section 16, *post*, as to the making of byc-laws for the prevention of the keeping of animals on any premises so as to be a nuisance or injurious to health; and section 17, which relates to the keeping of swine.

The appellant, being owner of a market held in a town, erected sheep pens on the pavement in front of the houses, and took toll for the sheep offered therein for sale. For fifty-five years and upwards the occupiers of the houses before which the pens were set up, had been in the habit of clearing away the droppings of the sheep, and appellant's servants never cleared them away except in cases where houses were unoccupied. A complaint was lodged by the inspector of nuisances against the appellant for not removing the nuisance thus caused by the sheep, and the justices issued their prohibition to the appellant. It was held that appellant was a "person through whose act, default, or sufferance," the nuisance arose, within the meaning of the 12th section of the Nuisances Removal Act, and that the ground enclosed by the hurdles and used as pens was "land or tenement" within the meaning of the said Act. It was held, also, that the nuisance was a recurring nuisance: *Draper v. Sperring*, 10 C. B. (N.S.) 113; 30 L. J. M. C. 225; 4 L. T. (N.S.) 365; 25 J. P. 566.

(e) See the proviso in the next sub-section as to accumulation or deposits arising in any trade or manufacture.

Byc-laws made under section 16, *post*, may relate to some accumulations or deposits which may be nuisances within this clause. See also sections 22, 29—36, as to street, house, and trade refuse.

A statement of claim alleged that the surface of the defendant's land had been artificially raised by earth placed thereon, and that, in consequence, rain-water falling on the defendant's land made its way through the defendant's wall into the adjoining house of the plaintiff and caused

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Note.

SECT. 2. substantial damage. It was held upon demurrer that the statement of claim disclosed a good cause of action. *Hurdman v. The North-Eastern Railway Company*, 3 C. B. D. 168; 47 L. J. C. P. 368; 42 J. P. 388. It is submitted that such an accumulation or deposit would be a nuisance within this clause.

Note. Where a stableman kept dung accumulating so that the neighbouring inhabitants had to shut their windows, it was held that he was liable to be convicted under a local act which imposed a penalty for keeping offensive matter so as to cause a nuisance: *Smith v. Waghorn*, 27 J. P. 744.

A pier and harbour company in whom a harbour was vested were held bound, under 18 & 19 Vict. c. 121, s. 12, to remove sea-weed which by the action of the sea was drifted into the harbour, and being left there became a nuisance: *Proprietors of Margate Pier and Harbour v. Margate Town Council*, 20 L. T. (N.S.) 564; 33 J. P. 437.

(f) The words "whether or not members of the same family" did not occur in 29 & 30 Vict. c. 90, s. 19. It may be doubted whether these words were necessary, having regard to the decision in *Rye Union (Guardians of) v. Payne*, 44 L. J. M. C. 148; 39 J. P. 375. They occur, however, in the corresponding clause of section 91 of the Public Health Act, 1875.

See the proviso in the next sub-section, where the house is used as a dwelling-house, and also as a factory, workshop, or workplace.

In a Scotch case, decided by the High Court of Justice, *Home v. The Local Authority of Kelso*, it was held that when a landlord let along with a farm a cottage, into which the tenant put a bailiff, and the cottage was overcrowded by the bailiff's family, the tenant and not the landlord was liable for the nuisance.

And see section 7, *post*, as to the effect of two convictions for overcrowding. See also section 95, which applies the provisions in the clause to tents, vans, sheds, or similar structures used for human habitation.

(g) See this enactment in the first schedule, *post*.

(h) For the law relating to factories within the Act of 1878, see sections 3 and 4 of that Act. These sections provide as follows:—A factory and a workshop shall be kept in a cleanly state and free from effluvia arising from any drain, privy, or other nuisance. A factory or workshop shall not be so overcrowded while work is carried on therein as to be injurious to the health of the persons employed therein, and shall be ventilated in such a manner as to render harmless, so far as is practicable, all the gases, vapours, dust or other impurities generated in the course of the manufacturing

process or handicraft carried on therein that may be injurious to health. A factory or workshop, in which there is a contravention of this section, shall be deemed not to be kept in conformity with this Act. Where it appears to an inspector under this Act that any act, neglect, or default in relation to any drain, water-closet, earth-closet, privy, ash-pit, water supply, nuisance or other matter in a factory or workshop is punishable or remediable under the law relating to public health, but not under this Act, that inspector shall give notice in writing of such act, neglect, or default, to the sanitary authority in whose district the factory or workshop is situate, and it shall be the duty of the sanitary authority to make such inquiry into the subject of the notice, and take such action thereon, as to that authority may seem proper for the purpose of enforcing the law. An inspector, under this Act, may, for the purpose of this section, take with him into a factory or a workshop a medical officer of health, inspector of nuisances, or other officer of the sanitary authority.

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(2) Provided that—

- (i.) Any accumulation or deposit necessary for the effectual carrying on of any business or manufacture shall not be punishable as a nuisance under this section, if it is proved to the satisfaction of the court that the accumulation or deposit has not been kept longer than is necessary for the purposes of the business or manufacture, and that the best available means have been taken for preventing injury thereby to the public health; and
- (ii.) In considering whether any dwelling-house or part of a dwelling-house which is used also as a factory, workshop, or workplace, or whether any factory, workshop, or workplace used also as a dwelling-house, is a nuisance by reason of over-crowding, the court shall have regard to the circumstance of such other user.

The first of these provisos is taken from 18 & 19 Vict. c. 121, s. 8, and corresponds to the first proviso in section 91 of the Public Health Act, 1875.

The second proviso is new.

SECT. 3.
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 Information of
 nuisances
 to sanitary
 authority.

3. Information of a nuisance liable to be dealt with summarily under this Act in the district of a sanitary authority may be given to that authority by any person, and it shall be the duty of every officer of that authority and of every relieving officer, in accordance with the regulations of the authority having control over him, to give that information; and it shall be the duty of the said authority to make the said regulations, and also the duty of the sanitary authority to give such directions to their officers as will secure the existence of the nuisance being immediately brought to the notice of any person who may be required to abate it, and the officer shall do so by serving a written intimation.

Under 18 & 19 Vict. c. 121, s. 10, information of a nuisance might have been given by any person aggrieved thereby or by any of the following persons:—The sanitary inspector or any paid officer under the said local authority; two or more inhabitant householders of the parish or place to which the notice relates; the relieving officer of the union or parish; any constable or any officer of the constabulary or police force of the district or place.

Under the corresponding section of the Public Health Act, 1875, s. 93, information of a nuisance may be given to a local authority by any person aggrieved, or by any two inhabitant householders, or by any officer of the authority, or by any relieving officer or constable or police officer of the district. The text simplifies the law by allowing any person to give information. The rest of the section relating to the duties of officers and the directions to be given to officers by the sanitary authority is new. See, further, as to the duties expressly imposed by the Act on sanitary inspectors, section 107, sub-section (3), *post.*

The written intimation to be given by an officer under the section does not appear to supersede or take the place of the formal notice which the sanitary authority must themselves give under the next section.

Notice
 requiring
 abatement
 of nui-
 sance.(a)

4.—(1) On the receipt of any information respecting the existence of a nuisance liable to be dealt with summarily under this Act(b) the sanitary authority shall, if satisfied of the existence of a nuisance, serve a notice(c) on the person by whose act, default, or sufferance the

nuisance arises or continues, (d) or, if such person cannot be found, on the occupier or owner (e) of the premises (f) on which the nuisance arises, requiring him to abate the same within the time specified in the notice, and to execute such works and do such things as may be necessary for that purpose, (g) and, if the sanitary authority think it desirable (but not otherwise) specifying any works to be executed. (h)

(a) This sub-section is taken from 29 & 30 Vict. c. 90. s. 21, which it reproduces in substance with the exception of the concluding words, which are new.

(b) See section 2, sub-section (1), *ante*.

(c) A form of this notice will be found in Schedule 3, *post*. As to the authentication and service of notice, see sections 127, 128, *post*. It should be observed that the notice must be given by the local authority, or a committee appointed under section 99, sub-section (4), *post*. It cannot be given by the clerk or other officer of his own accord without the previous direction of the sanitary authority. See *St. Leonard's, Shoreditch (Vestry of). v. Holmes*, 50 J. P. 132.

See section 120 as to the service of the notice upon one of several persons jointly liable.

(d) The owner or occupier is not to be served as such if the person by whose act, default, or sufferance the nuisance arises can be found. But it is not always easy to decide as between owner and occupier which of them should be treated as liable for the nuisance as the person by whose act, default, or sufferance the nuisance has arisen. The following cases may be referred to as indicating the principles which should be followed in deciding the question. If the owner of land erect a building which is a nuisance, or of which the occupation is likely to produce a nuisance, and let the land, he is liable to an indictment for such nuisance being continued or created during the term. He is also liable if he let a building which requires particular care to prevent the occupation from being a nuisance, and the nuisance for the want of such care on the part of the tenant. If a party buy a reversion during the tenancy, and the tenant afterwards, during his term erect a nuisance, the reversioner is not liable for it; but if such reversioner re-lets, allowing the nuisance to continue, he is liable for such continuance. And such purchaser is liable to be indicted for the continuance of the nuisance, if the original reversioner would have been liable, though the purchaser has had no opportunity of putting an end to the tenant's interest or abating the nuisance: *R. v. Pedly*, 1 A. & E.

SECT. 4. 822 ; 3 L. J. M. C. 119. See also *Todd v. Flight*, 9 C. B. (N.S.) 377 : 30 L. J. C. P. 21. From this decision it would seem to follow that when an owner or reversioner would be liable to be indicted for a nuisance, and is, therefore, to be regarded as the person by whose act, default, or sufferance, the nuisance arises or continues, the local authority may proceed against him under this part of the section. But, of course, it does not also follow that the tenant may not also be a person by whose act, &c., the nuisance arises. Thus, in *Russell v. Shenton*, 11 L. J. Q. B. 289 ; 3 Q. B. 449, it was held that the occupier and not the owner was *prima facie* liable for damages for a nuisance consisting of defective drains ; and the principle thus laid down appears to be of general application, although the proviso in the latter part of this section might possibly apply to the case of drains defective in point of construction. See also per PARKE, B., in *Chantler v. Robinson*, 4 Exch., at p. 169. And it has been held that if the lessee of property proceeding by the license of the lessor performs acts, which amount to a nuisance, both of them are liable at law and in equity : *White v. Jameson*, L. R. Eq. 303 ; 22 W. R. 761 ; 38 J. P. 694. In *Broder v. Saillard*, 2 Ch. D. 692 ; 45 L. J. Ch. 414 ; 24 W. R. 456, it was held that the occupier of a house is liable for allowing the continuance on his premises of any artificial work which causes an injury to a neighbour, even though it has been put there before he took possession. *Broder v. Saillard* was followed in *Reinhardt v. Mentasti*, 42 Ch. D. 685 ; 58 L. J. Ch. 787 ; 61 L. T. (N.S.) 328 ; 38 W. R. 10 ; 5 T. L. R. 709. And see *Tarry v. Ashton*, 1 Q. B. D. 314 ; 45 L. J. Q. B. 260 ; 34 L. T. (N.S.) 97 ; 24 W. R. 581 ; 40 J. P. 439. In *Gandy v. Jubber*, 5 B. & S. 78 ; 9 B. & S. 15, the tenancy was from year to year, and the Court of Queen's Bench held that the landlord might have re-entered at the end of each year, and that he was, therefore, liable for the consequences resulting from an accident caused by a grating in front of the house having been for some years in a defective state. In the Exchequer Chamber this decision was over-ruled on the ground that it proceeded on a misapprehension of the peculiar relations existing between the landlord and tenant in the case of a tenancy from year to year. Such a tenancy requires something to be done between the landlord and tenant in order to determine the tenancy. But no such modification is imported into a tenancy from week to week. Accordingly, where the plaintiff was injured through a defect in the condition of a coal plate in the pavement in front of a house let by the defendant on a weekly tenancy, and such defect, though not shown to have been in existence at the commencement of the tenancy, had existed for nearly two years before the accident, it was held that

having regard to the nature of the tenancy, there had been a re-letting of the premises after the nuisance was created, and that the defendant, as reversioner, was liable: *Sandford v. Clarke*, 21 Q. B. D. 398; 57 L. J. Q. B. 507; 59 L. T. (N.S.) 226; 37 W. R. 28; 52 J. P. 773. And see *Winter v. Baker*, 3 T. L. R. 569. A dictum of LITTLEDALE, J., in *Reg. v. Pelly* to the effect that if a reversioner allows a nuisance to continue after he might have determined the tenancy he is liable, appears to be over-ruled by *Gandy v. Jubber*, but, as explained in *Sandford v. Clarke*, only in so far as it applies to a tenancy from year to year. See also *Reg. v. Barrett*, 32 L. J. M. C. 36; *Reg. v. Stannard*, 33 L. J. M. C. 61. When the nuisance consists of the dangerous condition of the premises demised to the tenant, and the tenant is liable to repair under a covenant, the landlord is not liable in respect of the nuisance, unless he has done some act authorising the continuance of the dangerous state of the premises: *Pretty v. Bickmore*, L. R. 8 C. P. 401; 28 L. T. (N.S.) 704; 21 W. R. 733; 37 J. P. 552. And see *Nelson v. The Liverpool Brewery Company*, 2 C. P. D. 311; 46 L. J. C. P. 675; 25 W. R. 877. This rule applies even when the dangerous condition of the premises existed at the time of the demise, the lessee occupying under an obligation to repair: *Gwynnell v. Eamer*, L. R. 10 C. P. 658; 32 L. T. (N.S.) 835. A. let to B. a field for the purpose of its being worked as a lime quarry. The ordinary way of getting the limestone was by means of blasting, and A. authorised the quarrying of the stone and the erection of lime kilns in the field. A nuisance was caused to the adjoining occupier by the blasting and by the smoke from the kilns, and he brought an action against A. and B. On demurrer by A., held, that he, the landlord, was liable, although the nuisance was actually created by the act of his tenant, for the terms of the demise were an authority from him to B. to create the nuisance, which was, therefore, the necessary consequence of the mode of occupation contemplated in the demise: *Harris v. James and Another*, 45 L. J. Q. B. 545; 35 L. T. (N.S.) 240. The court characterised the previous case of *Rich v. Basterfield*, 4 C. B. 783; 16 L. J. C. P. 273, as one of excessive refinement. There A., the owner of a house with a fireplace and chimney, demised it to a tenant from week to week. The tenant lighted fires, and from the position of the chimney the emission of the smoke was a nuisance to B., the owner of the adjoining house. More than one week elapsed, during which A. did not determine the tenancy. In an action by B. against A. it was held that A. was not liable, as the tenant might by burning coke, or by abstaining to light fires, or in some similar way have used the premises without creating a nuisance. The owner is, of

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SECT. 4. course, liable for the existence of a nuisance consisting of or arising out of the non-repair of premises when he has taken upon himself the duty of repairing (*Leslie v. Pounds*, 4 Taunt. 649; *Payne v. Rogers*, 2 H. Bla. 350); or where the lessee is bound by his agreement to do the act which leads to the damage or matter of complaint: *Burt v. The Victoria Graving Company, Limited*, 47 L. T. (N.S.) 378, for in this case the lessee resembles an agent of the lessor for the purposes of such act.

It has been decided in Scotland that where a landlord let along with a farm a cottage, into which the tenant put a bailiff, and the cottage was overcrowded by the bailiff's family, the tenant and not the landlord was liable for the nuisance: *Home v. Kelso Local Authority*.

It is submitted that, in general, the occupier and not the owner is the person by whose act, default, or sufferance a nuisance consisting of overcrowding arises.

Where sheep were penned in pens fixed by the owner of a market on the highway of the market, and tolls were received by him for the same, it was held that the droppings of the sheep left therein constituted a recurring nuisance which arose from the default, permission, or sufferance of the owner of the market, for which he was liable: *Draper v. Sperring*, 10 C. B. (N.S.) 113; 30 L. J. M. C. 225; 4 L. T. (N.S.) 365; 25 J. P. 566.

But a lord of a manor was held not to be liable in respect of a filthy pond on a common in the manor: *Richmond Union v. The Dean and Chapter of St. Paul's*, 18 L. T. (N.S.) 522; 32 J. P. 374.

B. drained his premises into a barrel drain, which also received the sewage of other premises. This drain passed for about 300 yards under a turnpike road, and thence the sewage was conveyed by an open drain through certain land not belonging to B., and ultimately into an open drain about half a mile from B.'s premises, by the side of a road on land not B.'s. This open drain was a nuisance, the matter from B.'s premises in itself being sufficient to cause a nuisance. On complaint the justices ordered B. to abate the nuisance by cutting off all communication from his premises to the barrel drain. F. was the owner of six houses let to tenants. He had constructed a drain from the houses under land not his own by leave of the owner, by which the sewage was conveyed into and along a watercourse, and the accumulation at the mouth of the drain was a nuisance. On complaint the justices ordered F. to abate the nuisance:—Held, that the orders were rightly made on B. and F., for that they were the persons by whose act respectively the nuisances arose. In proceedings under the Act, the question whether or not the persons against whom the proceedings are taken have a legal right to cause their sewage to flow in the given

channel, &c., is immaterial: *Brown v. Bussell, Francombe v. Freeman*, L. R. 3 Q. B. 251; 37 L. J. M. C. 65; 18 L. T. (N.S.) 19; 16 W. R. 611; 9 B. & S. 1; 32 J. P. 196. SECT. 4
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A harbour company were held to be the persons through whose default a nuisance from the accumulation of sea-weed in the harbour arose or continued: *Margate Pier and Harbour (Proprietors of) v. Margate Town (Council of)*, 20 L. T. (N.S.) 564; 33 J. P. 437.

Where there was a flow of sewage from several houses without appreciable damage from each, but the accumulation caused a nuisance on other properties, the occupiers of each of the houses were held liable: *Hendon Union (Guardians of) v. Bowles*, 20 L. T. (N.S.) 609; 16 W. R. 510; 34 J. P. 19. See section 120, *post*, as to the procedure when a nuisance is caused by the acts of two or more persons.

As to the persons liable for the evolution of sulphuretted hydrogen gas in a sewer, see *St. Helen's Chemical Company v. St. Helen's (Corporation of)*, *ante*, p. 7.

The appellant rented land of the owner of houses and other land in the neighbourhood. The landowner, without the appellant's consent, made a sewer under the land occupied by the appellant. Pecuniary compensation was claimed at the time, but for two years the sewage of several houses passed through the sewer. The appellant, being unable to get satisfaction from his landlord, at length stopped up the sewer, and the local board obtained a conviction against him under sections 94, 96 of the Public Health Act, 1875, although no nuisance existed on his land. It was held, on a case stated, that the appellant was a person by whose act the nuisance arose or continued, and that he was rightly convicted: *Riddell v. Spear*, 40 L. T. (N.S.) 130; 43 J. P. 317.

The drainage from a gaol in the township of W., which is outside the borough of L., built there by the corporation of L., and duly declared to be the common gaol of that borough, was carried thence by open drains overland in the township of B., not belonging to the corporation, and caused a nuisance in B. The corporation of L. were thereupon summoned by the Nuisances Removal Committee of B., under 18 & 19 Vict. c. 121. It was held that the corporation of L., and not the justices having the management of the gaol, were the proper persons to be summoned and ordered to do what was necessary under that Act: *Ex parte the Mayor, &c., of Liverpool*, 27 L. J. M. C. 89; 22 J. P. 562.

In determining upon whom the notice should be served the sanitary authority may have to consider whether it is in the power of the person served to comply with it. Thus, if a nuisance exists on the lands of A., which has been caused by B., B. has no power to enter on A.'s land

SECT. 4. to abate the nuisance, and it was held that he cannot be ordered to do so : *Scarborough (Mayor of) v. Scarborough Rural Sanitary Authority*, 1 Ex. D. 344 ; 34 L. T. (N.S.) 768 ; 40 J. P. 726. This ease was followed in *Reg. v. Trimble*, 36 L. T. (N.S.) 608 ; 41 J. P. 455, where it was suggested by COCKBURN, C.J., that the order should be made on the owner of the premises where the nuisance exists. But the authority of these cases is seriously shaken by *Parker v. Inge*, 17 Q. B. D. 584 ; 55 L. J. M. C. 149 ; 55 L. T. (N.S.) 300 ; 51 J. P. 20. In that ease a local authority served the owner of premises with a notice, under section 94 of the Public Health Act, 1875, requiring him within seven days to abate a nuisance arising from the defective construction of a structural convenience, and for that purpose to execute certain specified works. Having failed to comply with the notice, the owner was summoned under section 95 before a court of summary jurisdiction, and on the hearing it was proved that the premises in question were occupied by a tenant of the owner under a lease for twenty-one years, containing the usual covenants :—Held, that the owner, even although he could not enter upon the premises and execute the works without the tenant's permission, had made default in complying with the requisitions of the notice within the meaning of section 95, and, therefore, that the justices had jurisdiction to make an order under section 96, requiring him to abate the nuisance. The decision in *Scarborough (Mayor of) v. Scarborough Rural Sanitary Authority*, has, however, been followed in a recent Irish ease, *Letterkenny Commissioners v. Collins*, 28 L. R. Ir. 235.

(e) See the definition of the expression "owner" in section 141, *post*.

It should be noticed that the occupier or owner is only liable as such when the person cannot be found by whose act, default, or sufferance the nuisance arises or continues.

(f) See the definition of "premises" in section 141, *post*.

(g) The abatement of the nuisance may involve the pulling down of the premises if they are unfit for habitation. See *Brown v. Biggleswade Union*, cited in 43 J. P. 554.

(h) The concluding words of the sub-section are new, and give the sanitary authority a discretion whether they will prescribe the necessary work or not. This discretion is not conferred upon sanitary authorities by the Public Health Act, 1875, s. 94, and a notice under that section must always state the works prescribed : *Ex parte Saunders*, 11 Q. B. D. 191 ; 52 L. J. M. C. 89 ; 47 J. P. 404 ; *Reg. v. Llewellyn*, 13 Q. B. D. 681 ; 33 W. R. 150 ; 49 J. P. 151 ; *Reg. v. Kent JJ.*, 55 L. J. M. C. 9 ; 49 J. P. 404 ; *Reg. v. Wheatley*, 16 Q. B. D. 34 ; 55 L. J. M. C. 11 ; 34 W. R. 257 ; 50 J. P. 424.

(2) The sanitary authority may also by the same or another notice served on such occupier, owner, or person require him to do what is necessary for preventing the recurrence of the nuisance, and if they think it desirable specify any works to be executed for that purpose, and may serve that notice notwithstanding that the nuisance may for the time have been abated, if the sanitary authority consider that it is likely to recur on the same premises.

This is a new provision. The preceding sub-section deals with the abatement of the nuisance. The notice mentioned in the text is intended to prevent its recurrence. The sanitary authority have a discretion with regard to the specifying of the necessary works as in the preceding sub-section.

For the definition of the terms "owner" and "premises," see section 141, *post.*

As to the authentication and service of the notice, see note (c) to the preceding sub-section.

(3) Provided that—

- (a.) Where the nuisance arises from any want or defect of a structural character,(a) or where the premises(b) are unoccupied(c) the notice shall be served on the owner:(d)
- (b.) Where the person causing the nuisance cannot be found, and it is clear that the nuisance does not arise or continue by the act, default, or sufferance of the occupier or owner of the premises, the sanitary authority may themselves abate the same and may do what is necessary to prevent the recurrence thereof:(e)
- (c.) Where the medical officer of health certifies to the sanitary authority that any house or part of a house in their district is so over-crowded as to be injurious or dangerous to the health of the inmates, whether or not members of the

SECT. 4.

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Vict. c.
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same family, the sanitary authority shall take proceedings under this section for the abatement of such nuisance: (f)

(d.) Where the nuisance is such absence of water-fittings as is declared a nuisance by section thirty-three of the Metropolis Water Act, 1871 (set out in the First Schedule to this Act), such absence shall be deemed to render the premises unfit for human habitation unless and until the contrary is shown to the satisfaction of the court. (g)

(a) The words of the Public Health Act, 1875, s. 94, are "the want or defective construction of any structural convenience," but the meaning appears to be the same. Structural conveniences appear to be such things as a landlord would provide in a house for the purpose of letting it to a tenant. Thus, an owner was held liable for defective construction of a privy: *Cook v. Montagu*, L. R. 7 Q. B. 418; 41 L. J. M. C. 149; 37 J. P. 53; and for defects in a water-closet and sink drains: *Parker v. Inge*, 17 Q. B. D. 584; 55 L. J. M. C. 149; 55 L. T. (N.S.) 300; 51 J. P. 20.

(b) See the definition of the term "premises" in section 141, *post*.

(c) It has been held that where property abutting on a highway becomes, through the wrongful act of strangers, a nuisance to the public lawfully using the highway, the owner of such property has a duty cast upon him, from the moment he becomes aware of the danger, to take steps to prevent his property becoming a source of injury to the public: *Silverton v. Marriot*, 59 L. T. (N.S.) 61; 52 J. P. 677.

(d) For the definition of the term "owner," see section 141, *post*.

As to the liability of an owner when the premises are occupied by a tenant, see *Parker v. Inge*, the facts of which are stated in note (d) to sub-section (1).

(e) This proviso is taken with a slight amendment from 29 & 30 Vict. c. 90, s. 21. It corresponds with the second proviso in section 94 of the Public Health Act, 1875. As to the overcrowding of tents, vans, &c., see section 95, *post*.

The words of the proviso are permissive, but it is submitted that it is the duty of the sanitary authority to act when they apply.

(f) This is an amendment of 18 & 19 Vict. c. 121, s. 29. The amendment consists in the extension of the provision to a part of a

house, and in the insertion of the words, "whether or not members of the same family."

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Note.

(g) See Sched. 1, *post*. The effect of this proviso is that under the next section a closing order may be made.

(4) Where a notice has been served on a person under this section, and either—

- (a.) The nuisance arose from the wilful act or default of the said person ; or
- (b.) Such person makes default in complying with any of the requisitions of the notice within the time specified,

he shall be liable to a fine not exceeding ten pounds for each offence, whether any such nuisance order as in this Act mentioned is or is not made upon him.

This sub-section is new. It renders the person by whose act, default, or sufferance a nuisance has been caused liable to a penalty, though it may not be necessary to proceed against him under the next section.

As to the recovery of the penalty, see section 117, *post*.

For the definition of a nuisance order, see the next section.

5.—(1) If either—

- (a.) The person on whom a notice to abate a nuisance has been served as aforesaid (a) makes default in complying with any of the requisitions thereof within the time specified ; or
- (b.) The nuisance, although abated since the service of the notice, is, in the opinion of the sanitary authority, likely to recur on the same premises, (b)

the sanitary authority shall make a complaint, and the petty sessional court hearing the complaint may make on such person a summary order (in this Act referred to as a nuisance order.) (c)

(a) This refers to the notice served under section 4, *ante*.

SECT. 5. (b) The contingency here provided for may arise though a notice has not been served under section 4, sub-section (2), *ante*.

Note. (c) Forms of the summons and order are contained in the 3rd Schedule, *post*. As a summary order is an order made pursuant to the Summary Jurisdiction Acts (see 42 & 43 Vict. c. 49, s. 51, and see also section 117 of this Act, *post*), the complaint must be made within the six months limited by 11 & 12 Vict. c. 43, s. 11. The period of limitation will apparently begin to run from the expiration of the time specified in the notice for the execution of the works required for the abatement of the nuisance or for preventing its recurrence, unless the offence is a continuing one, as in *Higgins v. Northwick Union*, 22 L. T. (N.S.) 752; 34 J. P. 806; *Reg. v. Waterhouse*, L. R. 7 Q. B. 545; 41 L. J. M. C. 115; 26 L. T. (N.S.) 761; 20 W. R. 712; 36 J. P. 471. As to the meaning of this expression, see the note to sub-section (8), *infra*.

As to the duty of the sanitary authority to obtain the order, see section 1, *ante*. As to legal proceedings generally, see sections 115—124, *post*.

As to appeal against the order, see section 6, *post*.

(2) A nuisance order may be an abatement order, a prohibition order, or a closing order, or a combination of such orders.

Forms of these orders will be found in the Third Schedule.

(3) An abatement order may require a person to comply with all or any of the requisitions of the notice, or otherwise to abate the nuisance within a time specified in the order.

(4) A prohibition order may prohibit the recurrence of a nuisance.

It will be for the court to decide whether, under the circumstances, any order should be made. The court may order some only of the requisitions in the notice to be complied with, or, disregarding the requisitions altogether, order the nuisance to be otherwise abated. The works necessary to be done must be stated in the order if the defendant so requires. See the next sub-section.

(5) An abatement order or prohibition order shall, if the person on whom the order is made so requires, or the court considers it desirable, specify the works to be executed by such person for the purpose of abating or preventing the recurrence of the nuisance. SECT. 5.

Under the corresponding section of the Public Health Act, 1875, s. 96, the court must specify the works required to be done, otherwise the order is bad: *Reg. v. Wheatley*, 16 Q. B. D. 34; 55 L. J. M. C. 11; 34 W. R. 257; 50 J. P. 424. This must be done under the provision in the text if the defendant so requires. If he does not so require it need not be done unless the court deem it desirable to do so.

(6) A closing order may prohibit a dwelling-house from being used for human habitation.

(7) A closing order shall only be made where it is proved to the satisfaction of the court that by reason of a nuisance a dwelling-house is unfit for human habitation, and if such proof is given the court shall make a closing order, and may impose a fine not exceeding twenty pounds.

Under section 4 (3) (a), the absence of water fittings is to be deemed to render a house unfit for human habitation unless the contrary is shown to the satisfaction of the court.

When a closing order is made it is left to the discretion of the court whether they will impose a fine or not. As to the recovery of the penalty, see section 117, *post*. The form of order in the Third Schedule does not provide for this penalty, and it is not clear whether it should be part of the order or form a separate conviction.

(8) A petty sessional court, when satisfied that the dwelling-house has been rendered fit for human habitation, may declare that it is so satisfied and cancel the closing order.

The Interpretation Act, 1889 (52 & 53 Vict. c. 63), s. 13, sub-sec. (12), provides that the expression "petty sessional court" shall,

SECT. 5. as respects England and Wales, mean a court of summary jurisdiction consisting of two or more justices when sitting in a petty sessional court-house, and shall include the Lord Mayor of the City of London, and any alderman of that city, and any metropolitan or borough police magistrate or other stipendiary magistrate when sitting in a court-house or place at which he is authorised by law to do alone any act authorised to be done by more than one justice of the peace. Sub-section (13) provides that the expression "petty sessional court-house" shall, as respects England or Wales, mean a court-house or other place at which justices are accustomed to assemble for holding special or petty sessions, or which is for the time being appointed as a substitute for such a court-house or place, and where the justices are accustomed to assemble for either special or petty sessions, at more than one court-house or place in a petty sessional division, shall mean any such court-house or place. The expression shall also include any court-house or place at which the Lord Mayor of the City of London, or any alderman of that city, or any metropolitan or borough police magistrate or other stipendiary magistrate, is authorised by law to do alone any act authorised to be done by more than one justice of the peace.

(9) If a person fails to comply with the provisions of a nuisance order with respect to the abatement of a nuisance, he shall, unless he satisfies the court that he has used all due diligence to carry out such order, be liable to a fine not exceeding twenty shillings a day during his default; and if a person knowingly and wilfully acts contrary to a prohibition or closing order he shall be liable to a fine not exceeding forty shillings a day during such contrary action; moreover, the sanitary authority may enter the premises to which a nuisance order relates, and abate or remove the nuisance, and do whatever may be necessary in execution of such order.

As to the recovery of these penalties, see section 117, *post.*

Where an order was made under the corresponding provisions of 18 & 19 Vict. c. 121, ss. 13, 14, upon an owner to abate a nuisance, and in his default upon the sanitary authority, it was held that he was liable to the penalty upon his default, though the local authority failed to act under the order: *Tomkin v. Great Stanmore (Nuisances Removal Committee of)*, 12 L. T. (N.S.) 118; 29 J. P. 117.

As to the recovery of the expenses incurred by the sanitary authority in abating or removing a nuisance, see sections 11, 120, 121, *post.*

Note.

6.—(1) Where a person appeals to the court of quarter sessions against a nuisance order, no liability to a fine shall arise, nor, save as in this section mentioned, shall any proceedings be taken or work done under such order until after the determination or abandonment of such appeal.

As to when appeal lies against a nuisance order, see the next sub-section.

The right of appeal, except as limited by this section, is given by section 125, *post.* For the procedure on the appeal, see the notes to that section.

When notice of appeal has been given it will operate as a stay of proceedings, subject, however, to the provisions of sub-section (4), *post.*

(2) There shall be no appeal to quarter sessions against a nuisance order, unless it is or includes a prohibition or closing order, or requires the execution of structural works.

In other words, appeal will always lie against a prohibition order or a closing order, but never against an abatement order unless it requires the execution of structural works.

Where there was a nuisance arising from open drains which could only be abated by the constructing of a covered drain, and the justices made an order to abate the nuisance, and to do such works and acts as were necessary to abate the same, it was held the order was not one to do structural works so as to give a right of appeal: *Ex parte The Mayor, &c., of Liverpool*, 27 L. J. M. C. 89; 22 J. P. 562.

This provision as to structural works applies only to private nuisances in respect of which summary orders may be made: *Reg. v. Middleton*, 28 L. J. M. C. 41; 23 J. P. 454.

(3) Where a nuisance order is made and a person does not comply with it and appeals against it to the court of quarter sessions, and such appeal is dismissed or is abandoned, the appellant shall be liable to a fine not

SECT. 6. exceeding twenty shillings a day during the non-compliance with the order, unless he satisfies the court before whom proceedings are taken for imposing a fine that there was substantial ground for the appeal, and that the appeal was not brought merely for the purpose of delay, and where the appeal is heard by the court of quarter sessions, that court may, on dismissing the appeal, impose the fine as if the court were a petty sessional court.

This provision is new. It is evidently intended to prevent frivolous appeals or appeals for mere delay. If an appeal is abandoned it will be necessary to take proceedings to recover the fine. If the appeal is heard and dismissed the quarter sessions may impose the fine, or, if it does not, proceedings may be taken before a court of summary jurisdiction. It may be doubted whether there was any need of this subsection, having regard to section 5, sub-section (9), for an appeal is only a stay, and if abandoned or dismissed does not affect liability.

(4) Where a nuisance order is made on any person and appealed against, and the court which made the order is of opinion that the continuance of the nuisance will be injurious or dangerous to health, and that the immediate abatement thereof will not cause any injury which cannot be compensated by damages, the court may authorise the sanitary authority immediately to abate the nuisance; but the sanitary authority, if they do so, and the appeal is successful, shall pay the cost of such abatement and the damages (if any) sustained by the said person by reason of such abatement; but if the appeal is dismissed or abandoned the sanitary authority may recover the cost of the abatement in a summary manner from the said person.

The Act does not provide for the recovery of damages from the sanitary authority, and the liability is, therefore, as it appears, enforceable only by action, according to the general rule, that where an Act creates an obligation to pay money, and contains no provision for its

recovery, an action will lie. See per PARKE, B., in *Shepherd v. Hills*, SECT. 6. 11 Ex. 67.

The costs recoverable in a summary manner by the sanitary authority under the above sub-section are recoverable before a court of summary jurisdiction. See section 117, *post*.

Note.

7. Where two convictions for offences relating to the provision over-crowding of a house or part of a house in any district have taken place within a period of three months (whether the persons convicted were or were not the same), a petty sessional court may, on the application of the sanitary authority, order the house to be closed for such period as the court may deem necessary.

The word "convictions" is here used. This seems to imply not only that orders have been made for the abatement or prohibition of the nuisance, but that fines have been imposed. A mere order to abate is not a conviction; but if a person has been convicted and fined under section 4, sub-section (4), section 5, sub-section (7), or section 5, sub-section (9), the provision in the text would apply.

For the meaning of the expression "petty sessional court," see the note to section 5, sub-section (8), *ante*.

8. Whenever it appears to the satisfaction of the petty sessional court that the person by whose act, default, or sufferance a nuisance liable to be dealt with summarily under this Act arises or the owner or occupier of the premises is not known or cannot be found, then the nuisance order may be addressed to, and if so addressed shall be executed by, the sanitary authority.

For the definition of a "petty sessional court," see the note to section 5, sub-section (8), *ante*.

This section is taken from 18 & 19 Vict. c. 121, s. 17. It corresponds with section 100 of the Public Health Act, 1875.

The proviso in section 4, sub-section (3) (b), applies only when the person causing the nuisance cannot be found, and it is clear that the owner and occupier are not responsible. In that case no order is necessary. But when neither the person causing the nuisance nor the owner nor occupier can be found, then an order may be made on the

in case of
two con-
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crowding.

In certain
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SECT. 8. sanitary authority under this section. It would appear that this order can only be made when the complaint is made by a private person under section 12, *post*, for in the absence of the person causing the nuisance and the owner and occupier, there is no person against whom the local authority can lodge a complaint.

Power to
sell ma-
nure, &c.

9. Any matter or thing removed by the sanitary authority in abating or doing what is necessary to prevent the recurrence of a nuisance liable to be dealt with summarily under this Act may be sold by public auction or, if the authority think the circumstances of the case require it, may be sold otherwise, or be disposed of without sale; and the money arising from the sale may be retained by the sanitary authority, and applied in payment of the expenses incurred by them with reference to such nuisance, and the surplus (if any) shall be paid, on demand, to the owner of such matter or thing.

Under 18 & 19 Vict. c. 121, s. 18, it was necessary to give five days' notice by bills distributed in the locality, unless the justices directed an immediate sale or disposal of the matter or thing where the delay would be prejudicial to the public health.

The corresponding section of the Public Health Act, 1875, is section 101.

Power of
entry.

10. The sanitary authority shall have a right to enter from time to time any premises (a)—

(a.) For the purpose of examining as to the existence thereon of any nuisance liable to be dealt with summarily under this Act at any hour by day, (b) or in the case of a nuisance arising in respect of any business, then at any hour when that business is in progress or is usually carried on, (c) and

(b.) Where under this Act a nuisance has been ascer-

tained to exist, or a nuisance order has been made, then at any such hour as aforesaid, until the nuisance is abated, or the works ordered to be done are completed, or the closing order is cancelled, as the case may be, and

(c.) Where a nuisance order has not been complied with, or has been infringed, at all reasonable hours, including all hours during which business therein is in progress or is usually carried on for the purpose of executing the order.

(a) The power of entry here conferred may be exercised by any members or officers of the sanitary authority, or any persons authorised by them generally, or in any particular case. See section 115, *post*, which contains general provisions as to the powers of entry under this Act, and how admission is to be procured if denied by the occupier.

(b) "Day" means the period between 6 A.M. and 9 P.M. See section 141, *post*. The hours mentioned in 18 & 19 Vict. c. 121, s. 11, were from 9 A.M. to 6 P.M.

(c) In a case of overrowing a warrant may be obtained authorising entry at any hour of the day or night. See section 114, sub-section (6), *post*.

11.—(1) All reasonable costs and expenses incurred in serving notice, making a complaint, or obtaining a nuisance order, or in carrying the order into effect, shall be deemed to be money paid for the use and at the request of the person on whom the order is made; or if the order is made on the sanitary authority, or, if no order is made, but the nuisance is proved to have existed when the notice was served or the complaint made, then of the person by whose act, default, or sufferance the nuisance was caused; and in case of nuisances caused by the act or default of the owner of premises, such costs and expenses may be recovered from any person who is for the time being owner of such premises:

This provision is taken from 18 & 19 Vict. c. 121, s. 19, and it corresponds with section 104 of the Public Health Act, 1875.

SECT. 11. The section seems to provide for the recovery even of costs which might have been ordered to be paid by the court of summary jurisdiction under the general power contained in 11 & 12 Vict. c. 43, s. 18. It gives the sanitary authority an absolute right to these costs and expenses.

Note. For the definition of the term "owner," see section 141, *post*.

The words "for the time being owner of such premises" were not in 18 & 19 Vict. c. 121, s. 19, and accordingly it was held under that section that the expenses could not be recovered from a person who was not owner when they were incurred: *Blything Union (Guardians of) v. Warton*, 32 L. J. M. C. 132; 3 B. & S. 352; 7 L. T. (N.S.) 672; 11 W. R. 306; 27 J. P. 87.

(2) Such costs and expenses, and any fines incurred in relation to any such nuisance, may be recovered in a summary manner or in the county court or High Court, and the court shall have power to divide costs, expenses, and fines between persons by whose acts, defaults, or sufferance a nuisance is caused, as to it may seem just.

The words "in a summary manner," mean in manner provided by the Summary Jurisdiction Acts. See section 117, *post*.

With reference to a corresponding provision in 11 & 12 Vict. c. 123, s. 3, it was held that whatever may have been the amount of the costs, and although a question of title to the land on which the nuisance existed arose, the county court had jurisdiction by the express terms of the Act: *Reg v. Harden*, 2 E. & B. 188; 22 L. J. Q. B. 299; 2 W. R. 164; 22 L. T. (O.S.) 228; *Hertford Union (Guardians of) v. Kempston*, 11 Ex. 295; 25 L. J. M. C. 41; 25 L. T. (O.S.) 185; 3 W. R. 521; 19 J. P. 678. But that Act provided for the recovery of the costs and expenses in any county court, or before two justices. No reference was made to a superior court, as in the text, and it is submitted, therefore, that while there is a remedy provided by the above sub-section for the recovery of costs, &c., to any amount in a summary manner, the county court can only be resorted to in cases where the amount sought to be recovered is within its jurisdiction.

With reference to the apportionment of the costs, &c., among persons jointly liable, see also section 120, *post*, as to proceedings against one or more of such persons. See also section 121, as to the recovery of expenses from an owner of premises.

12.—(1) Complaint of the existence of a nuisance SECT. 12.
 liable to be dealt with summarily under this Act on any premises within the district of any sanitary authority may be made by any person, and thereupon the like proceedings shall be had with the like incidents and consequences as to making of orders, fines for disobedience of orders, appeal, and otherwise, as in the case of a like complaint by the sanitary authority.

This section replaces 23 & 24 Vict. c. 77, s. 13, as amended by 37 & 38 Vict. c. 89, s. 53. Under these Acts, the complaint might be made by any inhabitant of the parish or place, any owner of premises therein, or any other person aggrieved or injuriously affected thereby. Now the complaint may be made by any person.

When a complaint is made by a private individual under this section a previous notice under section 4 is not necessary. See *Cocker v. Cardwell*, L. R. 5 Q. B. 15; 39 L. J. M. C. 28; 10 B. & S. 797; 21 L. T. (N.S.) 457; 18 W. R. 212; 34 J. P. 516.

It was held under the corresponding section of the Public Health Act, 1875, s. 105, that on the complaint of a private person, justices could not make an order for the abatement of a nuisance arising from sewage works: *Reg. v. Parlby*, *ante*, p. 3. In his judgment, WILLIS, J., said:—"We think the contention is right that as far as the person or body complained of is concerned, the magistrates have jurisdiction to entertain complaints against a local board as well as against an individual. If the limitation we had suggested did not exist, it would be thus in the power of any individual, in a district, to summon a local board for a nuisance committed by them in the management of their sewage works, and, if this view be sustainable, that when they are guilty of such a nuisance, the proviso upon which their statutory powers hang is violated, and the case is to be treated as if those statutory powers no longer existed, it would follow that, upon the breakdown of the system in a particular street or locality occasioning a nuisance, it would be within the competence of two justices to direct that the existing system should be abandoned, and a new method of treating the sewage resorted to, or they might order the sewers in a particular locality to be cut off from the general system, and thus create a far greater evil than that to be remedied, or they might order remedial works which might be entirely irreconcileable with the general system of the district. Indeed, there is no limit to the extravagance of the consequences that might flow from such a conflict of powers." This section does not impose a statutory

Power of individual to complain to justice of nuisance.

SECT. 12. duty on the owner of premises to keep them in a sanitary condition, or so as not to be a nuisance so as to enable the tenant to counter-claim damages for breach of such duty in an action for rent: *Hildige v. O'Farrell*, 6 L. R. Ir. 493.

Note.

- (2) Provided that the court may, if it thinks fit,—
 - (a.) Adjourn the hearing or further hearing of the complaint for the purpose of having an examination of the premises where the nuisance is alleged to exist, and may authorise the entry into such premises of any constable or other person for that purpose; and
 - (b.) Authorise any constable or other person to do all necessary acts for executing an order made on a complaint under this section, and to recover the expenses from the person on whom the order is made in a summary manner.

The constable or other person will, by notice of the authority given to him by the court, do the necessary works in default of the person upon whom the order is made. He will, in fact, take the place of the sanitary authority under section 5, *ante*, p. 19.

As to the recovery of the expenses in a summary manner, see section 117, *post*.

(3) Any constable or other person authorised under this section shall have the like powers, and be subject to the like restrictions as if he were an officer of the sanitary authority authorised under the foregoing provisions of this Act to enter any premises and do any acts thereon.

The foregoing provisions of the Act above referred to are contained in section 10, *ante*, p. 26. See also section 115, *post*, which regulates the exercise of the right of entry generally.

cause any proceedings to be taken against any person in SECT. 13. the High Court to enforce the abatement or prohibition High of any nuisance liable to be dealt with summarily under Conrt for this Act, or for the recovery of any fines from or for the abatement of nuis- punishment of any persons offending against the pro- ances. visions of this Act relating to such nuisances, and may pay as expenses of the execution of this Act their expenses of and incident to all such proceedings.

This section is taken from 18 & 19 Vict. c. 121, s. 3, and corresponds to section 107 of the Pnblc Health Act, 1875. It will chiefly, if not exclusively, be acted upon where it is considered necessary to apply for an injunction. There can hardly be any object in resorting to the High Court for the recovery of fines, or the punishment of offenders.

It was held under the corresponding section of the Public Health Act, 1875, that such proceedings must be ordinary proceedings known to the law, and that, in the absence of speial damage, a local authority cannot sue in respect of a public nuisance, except with the sanction of the Attorney-General, by action in the nature of an information : *Wallasry Local Board v Gracey*, 36 Ch. D. 593 ; 56 L. J. Ch. 739 ; 57 L. T. (N.S.) 51 ; 35 W. R. 694 ; 51 J. P. 740. A local anthority may act as relators in an action brought by the Attorney-General for the purpose of abating a public nuisance, and may themselves maintain an action for damages for a nuisance affecting property of which they are the actnal owners : *Attorney-General v. Logan*, L. R., 1891, 2 Q. D. 100.

As to the expenses of the execution of the Act, see section 103, *post.*

14.—(1) Where a nuisance liable to be dealt with summarily under this Act appears to be wholly or par- tially caused by some act, default, or sufferance com- mitted or taking place without the district the inhabi- tants of which are affected by the nuisance, the sanitary authority for that district may take or cause to be taken against any person in respect of such act, default, or sufferance any proceedings in relation to nuisances by this Act authorised with the same incidents and con- sequences as if such act, default, or sufferance were com-

Power to proceed where cause of nuisance arises without district.

SECT. 14. mitted or took place wholly within their district; so, however, that summary proceedings shall in no case be taken otherwise than before a court having jurisdiction in the district where the act, default, or sufferance is alleged to be committed or take place.

This provision is taken from section 108 of the Public Health Act, 1875, one of the few sections of that Act which applied to the metropolis. Having regard to its express enactment here, it is not easy to understand why it has been retained in the schedule to this Act.

The clause removes the difficulty caused by the decision in *Reg. v. Cotton*, 1 E. & E. 203; 28 L. J. M. C. 22; 32 L. T. (o.s.) 125; 7 W. R. 62; 5 Jur. (N.S.) 311; 23 J. P. 532. There certain brewers, in the parish of R., poured refuse into a river in that parish, and thereby created a nuisance in a part of the same river in the parish of D., where there was a local authority, whose jurisdiction did not include the parish of R. It was held that that local authority could not legally complain, and that the ratees could make no order.

As to the sanitary authorities and their districts, see section 99, *post*.

38 & 39
Viet. e. 54. (2) Section one hundred and eight of the Public Health Act, 1875, set out in the First Schedule to this Act, shall continue to extend to London, with the substitution of a sanitary authority under this Act, for any nuisance authority mentioned in the said section, and any reference in that section to a nuisance in the metropolis shall include a nuisance within the meaning of this Act.

See the First Schedule, *post*. And see the note to the preceding sub-section.

Penalty
for injur-
ing closet,
&c., so as
to cause a
nuisance.

15. If a person causes any drain, water-closet, earth-closet, privy, or ashpit to be a nuisance or injurious or dangerous to health by wilfully destroying or damaging the same, or any water-supply, apparatus, pipe, or work, connected therewith, or by otherwise wilfully stopping up, or wilfully interfering with, or improperly

using the same, or any such water-supply, apparatus, **SECT. 15.**
pipe, or work, he shall be liable to a fine not exceeding
five pounds.

This is a new provision.

As already stated there is no definition of a drain in this Act. See the note to section 2, *ante*, p. 5. A definition of an "ashpit" is contained in section 141, *post*.

It is submitted that it is an improper use of a water-closet or drain to put into it substances, which would stop or interfere with its due working.

As to the recovery of the fine, see section 117, *post*.

Penalties in respect of particular Nuisances.

Penalties in respect of particular Nuisances.

16.—(1) Every sanitary authority *(a)* shall make bye-laws *(b)*—

Bye-laws by sanitary authority and county council as to clearing streets and prevention of nuisances.

(a.) For the prevention of nuisances arising from any snow, ice, salt, dust, ashes, rubbish, offal, carion, fish, or filth, or other matter or thing in any street; *(c)* and

(b.) For preventing nuisances arising from any offensive matter running out of any manufactory, brewery, slaughter-house, knacker's yard, butcher's or fishmonger's shop, or dunghill, into any uncovered place, whether or not surrounded by a wall or fence; and

(c.) For the prevention of the keeping of animals on any premises in such place or manner as to be a nuisance or injurious or dangerous to health; *(d)* and

(d.) As to the paving of yards and open spaces in connexion with dwelling-houses.

SECT. 16

(2) The county council (e) shall make bye-laws—

(a.) For prescribing the times for the removal or carriage by road or water of any faecal or offensive or noxious matter or liquid in or through London, (f) and providing that the carriage or vessel used therefor shall be properly constructed and covered so as to prevent the escape of any such matter or liquid, and as to prevent any nuisance arising therefrom; and

(b.) As to the closing and filling up of cesspools and privies, and as to the removal and disposal of refuse, and as to the duties of the occupier of any premises in connexion with house refuse, so as to facilitate the removal of it by the scavengers of the sanitary authority.

(a) The sanitary authorities are enumerated in section 99, *post*.

(b) As to the making of bye-laws see section 114, *post*. As to the time within which the first bye-laws must be made, see section 142, *post*.

(c) See the proviso to this clause in sub-section (4), *infra*. The word "street" is defined in section 141, *post*. This clause is somewhat wider in its operation than the corresponding enactment in section 44 of the Public Health Act, 1875. Sweeping mud into a sewer was held to be an offence against 18 & 19 Vict. c. 120, s. 205, which forbids the sweeping into any sewer of any "soil, rubbish, or filth, or any other thing:" *Metropolitan Board of Works v. Eaton*, 50 L. T. (N.S.) 634; 48 J. P. 611.

(d) See also as to the keeping of swine, section 17, *post*.

In *Everett v. Grapes*, 3 L. T. (N.S.) 669; 25 J. P. 644, it was held, under 5 & 6 Will. 4, c. 76, s. 90, that a bye-law aimed against keeping pigs in a borough generally, instead of keeping them so as not to be a nuisance, was bad. But see *Wanstead Local Board of Health v. Wooster*, 55 L. T. 81; 37 J. P. 403; 38 J. P. 21, where a bye-law preventing any occupier of a house keeping pigs within 100 feet of a dwelling-house was held to be valid on the ground that the doing so was likely to be a nuisance, so that it might be prohibited altogether. It was decided in the same case that the bye-law might require the removal of filth, &c., without any previous requisition by the local

authority. But the principle of this decision was held to apply only to SECT. 16.
Note. urban and not to rural districts. Therefore, where a rural authority, having urban powers under this section, made a bye-law prohibiting the keeping of swine within the distance of 50 feet from any dwelling-house within their district, it was held that the bye-law was unreasonable and bad: *Heap v Burnley Union*, 12 Q. B. D. 617; 53 L. J. M. C. 76; 32 W. R. 661; 48 J. P. 359. Lord COLERIDGE, C.J., said it was impossible to attempt to lay down what, under all circumstances, would be a reasonable bye-law; but it seemed to him unreasonable to say, that in country districts nobody should keep a pig within 50 feet of his dwelling-house. The corresponding section of the Public Health (Ireland) Act, 1878 (41 & 42 Vict. c. 52, s. 54), enables urban authorities to make bye-laws for "the regulation of the keeping of animals upon any premises, or for the prevention of such keeping so as to be injurious to health." A bye-law under this section was as follows: "No swine shall be kept in any yard within a distance of 21 feet from a dwelling-house or public building, or any building in which any persons may be or may be intended to be employed in any manufacture, trade, or business, without the special permission of the sanitary authority." It was held that this bye-law was valid: *Lutton v. Doherty*, 16 L. R. Ir. 493. It is not necessary in order to procure a conviction under such a bye-law that a nuisance has been caused by the defendant's disobedience of the bye-law: *Long Street Local Board v. Seed*, 39 J. P. 278.

(c) This means the London County Council, see section 141, *post*. As the bye-laws in question have to be observed and enforced by the sanitary authority, the proviso to section 114, *post*, relating to the making of bye-laws, will apply. As to the time within which the first bye-laws must be made, see section 142, *post*. The bye-laws of the county council will not apply in the city of London, see section 133, *post*.

(f) This means the administrative county of London, see section 141, *post*.

(3) It shall be the duty of every sanitary authority to observe and enforce any bye-laws made under this section.

It has already been pointed out that this sub-section renders the proviso in section 114, *post*, applicable to bye-laws made by the county council under this section.

The county council may prosecute in default of the sanitary authority under section 100, *post*. And complaint of such default may be made to the Local Government Board under section 101, *post*.

SECT. 16. (4) Except as otherwise provided by the bye-laws, a constable may arrest without warrant and take before a justice any person whom he finds committing an offence against such bye-laws and who refuses to give his true name and address.

This is an unusual provision, but it may be necessary to exercise it in the metropolis, where it is impossible for a constable to recognise the offender in every case.

The person arrested must be "found committing" the offence. Neglecting to do something required by the bye-laws, or merely suffering something to be done contrary to the bye-laws, would not be sufficient. See *Horley v. Rogers*, 24 J. P. 261; 29 L. J. M. C. 140.

No arrest can be made if the true name and address be given, but the sub-section does not provide for the detention of the person arrested for the purpose of verifying the name and address given by him. Therefore, if an offender gives a name and address, it will be imprudent for the constable to detain him.

(5) Provided that the bye-laws shall not make it an offence to lay sand or other material in any street in time of frost to prevent accidents, or litter or other matter to prevent the freezing of water in pipes, or in case of sickness to prevent noise, if the same is laid and when the occasion ceases duly removed in accordance with the bye-laws.

The bye-laws may regulate, though they must not prohibit, the laying of things in the streets to prevent accidents, &c.

Penalty
for keep-
ing swine
in unfit
place.

17.—(1) A person shall not—

- (a.) Feed or keep any swine in any locality, premises, or place which is unfit for the keeping of swine, or in which the feeding or keeping of swine may create a nuisance or be injurious to health, or
- (b.) Permit any swine to stray or go about in any street or public place.

This section is taken from 25 & 26 Vict. c. 102, s. 91; 57 Geo. 3, c. xxix. s. 68; 2 & 3 Vict. c. 47, s. 60 (5).

See the preceding section which enables bye-laws to be made for SECT. 17. preventing of keeping animals so as to be a nuisance.

Keeping swine in a city is a nuisance at common law : *Reg. v. Wigg*, *Salk.* 460.

Note.

This enactment forbids the keeping of swine in improper places, and the keeping of swine in proper places, but in an improper manner. See *Digby v. West Ham Local Board*, 22 J. P. 304. If the keeping of the swine is a nuisance, it need not also be injurious to health : *Banbury Sanitary Authority v. Page*, 8 Q. B. D. 97 ; 51 L. J. M. C. 21 ; 45 L. T. (N.S.) 759 ; 30 W. R. 415 ; 46 J. P. 184.

The corresponding section of the Public Health Act, 1875, s. 47, forbids the keeping of swine in a dwelling-house. It would, no doubt, be held that a dwelling-house is a place which is unfit for the keeping of swine within the meaning of the section.

(2) If any person acts in contravention of this section he shall be liable to a fine not exceeding forty shillings, and to forfeit the swine, and to a further fine not exceeding ten shillings for every day during which he continues such offence after notice from the sanitary authority to discontinue the same.

As to the recovery of these penalties, see section 117, *post*.

As to the forfeiture, see section 119, sub-section (2), *post*.

It should be observed that this section affords an alternative remedy in some cases, which might otherwise be dealt with under those sections of this Act which relate to nuisances generally. See section 2, *ante*, p. 2.

(3) Any swine found straying or going about in any street or public place may be seized and removed by any constable.

The section does not go on to say what the constable is to do with the swine when he has removed it. It appears, however, from section 117, sub-section (2), that there is no forfeiture of the swine under the preceding sub-section without an order of the court stating how the swine is to be sold or disposed of.

(4) Any premises within forty yards of any street or

SECT. 17. public place shall be deemed for the purposes of this section to be a place unfit for keeping swine.

This provision applies to the whole metropolis. Formerly it applied only to such parts as were subject to the 57 Geo. 3, e. xxix.: *Chelsea (Vestry of) v. King*, 34 L. J. M. C. 9; 29 J. P. 39.

Power to prohibit keeping of animals in unfit place.

18. Where it is proved to the satisfaction of a petty sessional court that any locality, premises, or place are or is unfit for the keeping of any animal, the court may by summary order prohibit the using thereof for that purpose for the future.

This section is new.

A summary order is an order made under the Summary Jurisdiction Acts: 42 & 43 Vict. c. 49, s. 51, sub-sect. (3).

Offensive Trades.
Prohibition and regulation of establishing anew certain offensive businesses, and bye-laws as to offensive businesses.

Offensive Trades.

19.—(1) If any person—

- (a.) Establishes anew (a) the following businesses, or any of them; that is to say, the business of blood boiler, bone boiler, manure manufacturer, soap boiler, tallow melter, or knacker; (b) or
- (b.) Establishes anew, (a) without the sanction of the county council, the following businesses, or any of them; that is to say, the business of fellmonger, tripe boiler, slaughterer of cattle or horses, or any other business which the county council may declare by order confirmed by the Local Government Board and published in the *London Gazette* to be an offensive business, (c)

he shall be liable to a fine not exceeding fifty pounds in respect of the establishment thereof, and any person carrying on the same when established shall be liable to

a fine not exceeding fifty pounds for every day during SECT. 19. which he so carries on the same : (d)

This section is taken from 37 & 38 Vict. c. 67, ss. 2, 3.

(a) As to the meaning of these words, see sub-section (8), *post*.

(b) The word "knacker" is defined by section 141, *post*. It should be observed that this clause absolutely prohibits the newly establishing in the metropolis the businesses of blood boiling, &c. As to the business of a soap boiler, see sub-section (2), *infra*.

(c) The county council are now substituted for the Metropolitan Board of Works. See sub-section 10, *infra*. The provision as to the declaring of the business to be offensive avoids the difficulty arising in the corresponding section of the Public Health Act, 1875, where there are general words applying to any offensive trade or business, and it has not always been easy to decide what trades fell within the description of offensive trades. Thus, it was held that brick-making was not an offensive trade: *Wanstead Local Board v. Hill*, 13 C. B. (N.S.) 479; 32 L. J. M. C. 135; 7 L. T. (N.S.) 744; 11 W. R. 368; nor a manure manufactory: *Cardwell v. Newquay Local Board*, 39 J. P. 742; nor a fried fish-shop: *Boyton v. Braintree Local Board*, 52 L. T. (N.S.) 99; 48 J. P. 582; but a rag and bone business was held to be offensive: *Passey v. Oxford Local Board*, 43 J. P. 622.

The expression "slaughterer of cattle" is defined in section 141, *post*.

As to the mode in which the sanction of the county council is to be given, see sub-section (3), *infra*. The county council is the London County Council: see section 141, *post*.

(d) As to the recovery of these penalties, see section 117, *post*.

(2) Provided that this enactment shall not render any person liable to a fine for establishing anew, with the sanction of the county council, or carrying on the business of soap boiler if and as long as that business is a business in which tallow or any animal fat or oil other than olein is not used by admixture with alkali for the production of soap.

This is a new provision.

As to the sanction of the county council, see the next sub-section.

(3) The county council shall give their sanction by order, (a) but at least (b) fourteen days before making any

SECT. 19. such order shall make public the application for it by serving on the sanitary authority within whose district the premises on which the business is proposed to be established are situate, and by advertising notice(c) of the application and of the time and place at which they will be willing to hear all persons objecting to the order, and by causing a copy of the notice to be affixed in a conspicuous part of the said premises; and they shall consider any objections made at that time and place, and shall grant or withhold their sanction as they think expedient.(d)

(a) As to the fee to be charged for the order, see sub-section (7), *post*. As to the form of the order and its authentication, see section 127, sub-section (2), *post*.

(b) This means fourteen clear days, exclusive of the day of giving the notice and the day of making the order: *R. v. Shropshire JJ.*, 8 A. & E. 173; *Young v. Higgon*, 6 M. & W. 49.

(c) The bye-laws under the next sub-section will provide for the mode of application. As to the mode of service of the notice on the sanitary authority, see section 128, sub-section (2), *post*. The Act does not provide for notices by advertisement. The provision as to fixing a copy on the premises is new.

(d) It is entirely in the discretion of the county council to grant or withhold their sanction.

(4) The county council may make bye-laws for regulating the conduct of any businesses specified in this section, which are for the time being lawfully carried on in London, and the structure of the premises on which any such business is being carried on, and the mode in which the said application is to be made.

As to the making of bye-laws, see section 114, *post*. As to the time within which the first bye-laws are to be made, see section 142, *post*.

The bye-laws will apply to all the businesses within the section, whether old or newly established. A local Act in the City of London authorised commissioners to make rules for the management of any place used as a slaughter-house or for the killing of cattle. A rule

made under this Act directed that proper accommodation or poundage should be provided for cattle apart from the place where meat is stored, and that animals should not be kept there more than twelve hours before they were killed. The defendant kept a pound in a separate street 100 yards from his slaughter-house, and disobeyed the rules as to his pound, and was convicted:—Held, the rule was *ultra vires* except as regards pounds which were parts of slaughter-houses, and that this pound not being part of the slaughter-house, the conviction was wrong: *Nicklinson v. Newman*, 33 J. P. 644.

SECT. 19.
Note.

(5) Any such bye-law may empower a petty sessional court by summary order to deprive any person, either temporarily or permanently, of the right of carrying on any business to which such bye-law relates, as a punishment for breaking the same, and any person disobeying such order shall be liable to a fine not exceeding fifty pounds for every day during which such disobedience continues.

For the meaning of the expression “petty sessional court,” see the note to section 5, sub-section (8), *ante*, p. 21.

A summary order is an order of a court of summary jurisdiction made pursuant to the Summary Jurisdiction Acts: 42 & 43 Vict. c. 49, s. 51, sub-sect. (3).

As to the recovery of the fine, see section 117, *post*.

(6) Any sanitary authority or person aggrieved by any proposed bye-law under this section, or by any proposed alteration or repeal of a bye-law, may forward notice of his objection to the Local Government Board, who shall consider the same.

It may be doubted whether this provision is now necessary, having regard to section 184 of the Public Health Act, 1875, which is incorporated by section 113, *post*. It has, however, been repeated from 37 & 38 Vict. c. 67, s. 4.

(7) There shall be charged for an order of the county council under this section, and carried to the county

SECT. 19. fund, such fee not exceeding forty shillings, as the county council may fix.

The order referred to is that giving the sanction of the county council to the establishment of a business mentioned in this section. See sub-section (3), *supra*.

(8) For the purposes of this section, a business shall be deemed to be established anew, not only if it is established newly, but also if it is removed from any one set of premises to any other premises, or if it is renewed on the same set of premises, after having been discontinued for a period of nine months or upwards, or if any premises on which it is for the time being carried on are enlarged without the sanction of the county council; but a business shall not be deemed to be established anew on any premises by reason only that the ownership of such premises is wholly or partially changed, or that the building in which it is established having been wholly or partially pulled down or burnt down has been reconstructed without any extension of its area.

This provision is taken from 37 & 38 Vict. c. 67, s. 13. There is no corresponding provision in the Public Health Act, 1875.

As to the manner in which the sanction of the county council is to be given, see sub-section (3), *supra*. A cattle market company, cattle never having been slaughtered in the market before, erected a building in which they allowed persons to slaughter cattle on payment of two shillings a head, the company finding the tackle attached to the building, but the persons slaughtering bringing their own implements. It was held that the company were liable to the penalty under the corresponding provisions of 11 & 12 Vict. c. 83, s. 61, for having established the business of slaughterers of cattle: *Liverpool Cattle Market Company v. Hodson*, L. R. 2 Q. B. 131; 36 L. J. M. C. 30; 8 B. & S. 184; 15 L. T. (N.S.) 534; 15 W. R. 563; 31 J. P. 245.

(9) Nothing in this section shall render an order of the county council necessary to authorise the slaughter of cattle at the Metropolitan cattle market, or at the cattle market at Deptford, or shall authorise the making of bye-

laws affecting either of those markets or the slaughter-houses erected thereat either before or after the commencement of this Act. SECT. 19.

This provision is taken from 37 & 38 Vict. c. 67, s. 15.

For the definition of a "slaughterer of cattle," see section 141, *post.*

(10) In the application of this section to the City of London, the commissioners of sewers shall be substituted for the county council, and the consolidated rate for the county fund.

The commissioners of sewers are the sanitary authority for the City of London. See sections 99, 103, *ante.*

20.—(1) A person carrying on the business of a slaughterer of cattle or horses, knacker, or dairyman, shall not use any premises in London (outside the City of London) as a slaughter-house, or knacker's yard, or a cow-house or place for the keeping of cows, without a license from the county council, and if he does he shall for each offence be liable to a fine not exceeding five pounds, and the fact that cattle have been taken into unlicensed premises shall be *prima facie* evidence that an offence under this section has been committed.

The expression "slaughterer of cattle," "dairyman," "knacker," and "premises," are defined by section 141, *post.*

Under the repealed sections, 25 & 26 Vict. c. 102, s. 93, and 37 & 38 Vict. c. 67, s. 10, the licenses were granted by justices in special sessions, but the powers of the justices, were transferred to the London County Council, by section 45 of the Local Government Act, 1888.

The repealed section did not apply to a slaughterer of horses or knacker.

As to the recovery of the fine, see section 117, *post.*

The concluding words of the section that the taking of cattle into unlicensed premises shall be *prima facie* evidence of an offence presumably applies only to the offence of keeping cows without a license.

SECT. 20. (2) A license under this section shall expire on such day in every year as the county council fix, and when a license is first granted shall expire on the day so fixed which secondly occurs after the grant of the license, and a fee not exceeding five shillings to be carried to the county fund may be charged for the license.

If the day fixed for the expiration of a licensee is the 31st December, a license first granted on the 1st January will not expire on the following 31st December, but on the 31st December in the next year.

(3) Not less than fourteen days before a license for any premises is granted or renewed under this section, notice of the intention to apply for it shall be served on the sanitary authority of the district in which the premises are situate, and that sanitary authority, if they think fit, may show cause against the grant or renewal of the license.

As to the mode of service of the notice on the sanitary authority, see section 128, sub-section (2), *post*.

(4) An objection shall not be entertained to the renewal of a license under this section unless seven days previous notice of the objection has been served on the applicant, save that, on an objection being made, of which notice has not been given, the county council may, if they think it just so to do, direct notice thereof to be served on the applicant, and adjourn the question of the renewal to a future day, and require the attendance of the applicant on that day, and then hear the case, and consider the objection as if the said notice had been duly given.

This provision does not apply to the grant of a licensee for the first time but only to a renewal.

As to when a licensee is to be deemed to be renewed, see sub-section (6), *infra*.

The sanitary authority may, no doubt, object, but the text does not provide that any other person or body may do so. Compare section 19, sub-section (3), *ante*, p. 39. SECT. 20.
Note.

(5) Where a committee of the county council determine to refuse or to recommend the council to refuse the renewal of any license under this section, the county council shall, on written application made within seven days after such determination is made known to the applicant, hear the applicant against such refusal.

The power of the county council to delegate their powers and duties to a committee is given to them by section 22 of the Municipal Corporations Act, 1882, which is incorporated with, and amended by the Local Government Act, 1888, ss. 75, 82. When the powers and duties of the county council, as to licenses under this section, are delegated to a committee, and the committee refuse to grant or renew a license, an appeal will lie to the whole council.

(6) For the purposes of this section a license shall be deemed to be renewed where a further license is granted in immediate succession to a prior license for the same premises.

A further license will be required on the expiration of a license as explained by sub-section (2), *supra*.

(7) The sanitary authority shall have a right to enter any slaughter-house or knacker's yard at any hour by day or at any hour when business is in progress or is usually carried on therein, for the purpose of examining whether there is any contravention therein of this Act or of any bye-law made thereunder.

The powers of the sanitary authority as to entry on premises are regulated by section 115, *post*.

The expressions "slaughter-house," and "knacker's yard," are defined by section 141, *post*. The same section provides that "day" means from 6 A.M. to 9 P.M.

Bye-laws may be made under sections 16, 19, *ante*, p. 33, affecting slaughter-houses or knacker's yards.

SECT. 20. (8) Nothing in this section shall extend to slaughter-houses erected before or after the commencement of this Act in the Metropolitan cattle market under the authority of the Metropolitan Market Act, 1851, or the Metropolitan Market Act, 1857.

Duty of sanitary authority to complain to justice of nuisance arising from offensive trade.

21.—(1) Where any manufactory, building, or premises used for any trade, business, process, or manufacture, causing effluvia, (a) is certified to the sanitary authority by their medical officer of health, or by any two legally qualified medical practitioners, or by any ten inhabitants of the district of such authority, to be a nuisance or injurious or dangerous to the health of any of the inhabitants of the district, (b) such authority shall (c) make a complaint, and if it appears to the petty sessional court (d) hearing the complaint that the trade, business, process, or manufacture carried on by the person complained of is a nuisance, or causes any effluvia which is a nuisance or injurious or dangerous to the health of any of the inhabitants of the district, then, unless it is shown that such person has used the best practicable means for abating the nuisance, or preventing or counteracting the effluvia, the person so offending (being the owner or occupier of the premises, or being a foreman or other person employed by such owner or occupier) shall be liable to a fine not exceeding fifty pounds. (c)

This section is taken from 18 & 19 Vict. c. 121, ss. 27, 30, and 29 & 30 Vict. c. 90, s. 18. It corresponds to section 114 of the Public Health Act, 1875.

(a) The section applies to any manufacture in which effluvia are given off, though the business may not be an offensive trade within section 19, *ante.*

(b) If the effluvia amount to a nuisance in the sense of causing annoyance and discomfort, it is sufficient to bring the trade within this section, without proving also that there is injury to health: *Malton Board of Health v. Malton Farmers' Manure Company*, 4 Ex. D. 302;

49 L. J. M. C. 90 ; 40 L. T. (N.S.) 755 ; 27 W. R. 802 ; 44 J. P. 155 ; SECT. 21. *Houldershaw v. Martin*, 1 T. L. R. 323. In the latter case the *nuisance* complained of was a fried fish shop.

Note.

(c) This word is imperative ; the sanitary authority have no discretion in the matter. If they refuse or fail to make the complaint, the county council may do so under section 100, *post*, or proceedings may be taken against the sanitary authority under section 101, *post*.

(d) The meaning of the expression "petty sessional court," has already been explained in the note to section 5, sub-section (8), *ante*, p. 21.

(e) As to the recovery of the penalty, see section 117, *post*.

(2) Provided that the court may suspend its final determination on condition that the person complained of undertakes to adopt, within a reasonable time, such means as the court may deem practicable, and order to be carried into effect, for abating the nuisance, or mitigating or preventing the injurious effects of the effluvia.

This provision is imperfect, for it does not state what the final determination is to be if means are taken to abate the nuisance, or if the means ordered to be adopted prove ineffective. Probably the sub-section means that the court may adjourn the hearing *sine die* and fine the defendant, if after the lapse of a reasonable time effective measures are not taken to abate the nuisance.

(3) The sanitary authority may, if they think fit, on such certificate as is in this section mentioned, cause to be taken any proceedings in the High Court against any person in respect of the matters alleged in such certificate.

See the similar provision in section 13, *ante*, p. 30, and the notes to that section. It is for the sanitary authority, in their discretion, to determine whether proceedings shall be taken in the High Court, instead of proceeding under sub-section (1) before a petty sessional court.

(4) The sanitary authority may take proceedings under this section in respect of a manufactory, building, or premises situate without their district, so, however,

SECT. 21. that the summary proceedings shall be had before a court having jurisdiction in the district where the manufactory, building, or premises are situate.

This sub-section is taken from the Public Health Act, 1875, s. 115 which applies to the metropolis.

38 & 39
Vict. c. 55

(5) Section one hundred and fifteen of the Public Health Act, 1875 (set out in the First Schedule to this Act), shall continue to extend to London, with the substitution of a sanitary authority under this Act for a nuisance authority mentioned in the said section, and any reference in that section to a nuisance in the metropolis or to any building, manufactory, or place in the metropolis which is injurious to health, shall include any nuisance within the meaning of this Act, and any manufactory, building, or place which is dangerous to health.

See the First Schedule, *post*.

It is difficult to understand what is the object of this sub-section, having regard to the preceding one, which enacts, in substance, section 115 of the Public Health Act, 1875.

Provision
as to
nuisance
created by
sanitary
authority
in dealing
with
refuse.

22.—(1) The removal of house refuse and street refuse by a sanitary authority when collected or deposited by that authority shall be deemed to be a business carried on by that authority within the meaning of the last preceding section, and a complaint or proceedings under that section in relation to any such business may be made or taken by the county council in like manner as if the council were a sanitary authority.

This section is new.

“House refuse” and “street refuse” are defined by section 141, *post*. As to the removal of refuse, see section 29, and the following sections.

Under the provision in the text, the county council will be enabled to proceed against a sanitary authority, and they will be bound to do so upon a certificate given, as provided by the preceding section.

(2) Any premises used by a sanitary authority for SECT. 22. the treatment or disposal of any street refuse or house refuse, as distinct from the removal thereof, which are a nuisance or injurious or dangerous to health, shall be a nuisance liable to be dealt with summarily under this Act, and for the purpose of the application thereto of the provisions of this Act relating to such nuisances the county council shall be deemed to be a sanitary authority.

This sub-section will apply to places used for the sifting or destruction of refuse. The county council will be required to give a notice to the sanitary authority, under section 4, and proceed before a court of summary jurisdiction, under section 5, if the nuisance is not abated.

Smoke Consumption.

23.—(1) Every furnace employed in the working of engines by steam, and every furnace employed in any public bath or washhouse, or in any mill, factory, printing house, dyehouse, iron foundry, glasshouse, distillery, brewhouse, sugar refinery, bakehouse, gasworks, water-works, or other buildings used for the purpose of trade or manufacture (although a steam engine be not used or employed therein), shall be constructed so as to consume or burn the smoke arising from such furnace.

This sub-section is taken from 16 & 17 Vict. c. 128, s. 1, as amended by 19 & 20 Vict. c. 107, s. 2.

As to what is meant by consuming or burning the smoke, see sub-section (4), *infra.*

(2) If any person being the owner or occupier of the premises, or being a foreman or other person employed by such owner or occupier—

(a.) Uses any such furnace which is not constructed so as to consume or burn the smoke arising therefrom; or

SECT. 23. (b.) So negligently uses any such furnace as that the smoke arising therefrom is not effectually consumed or burnt; or

(c.) Carries on any trade or business which occasions any noxious or offensive effluvia, or otherwise annoys the neighbourhood or inhabitants, without using the best practicable means for preventing or counteracting such effluvia or other annoyance;

such person shall be liable to a fine not exceeding five pounds, and on a second conviction to a fine of ten pounds, and on each subsequent conviction to a fine double the amount of the fine imposed on the last preceding conviction.

This sub-section is taken from 16 & 17 Vict. c. 128, s. 1.

As to what is meant by consuming or burning smoke, see sub-section (4), *infra*. The defendant, who was the owner and occupier of certain premises in the metropolis used for the purpose of manufacture was summoned under 16 & 17 Vict. c. 128, s. 1, for negligently using a furnace in such premises, so that the smoke arising therefrom was not effectually consumed. The furnace in question was constructed so as to consume its own smoke, if carefully used; and the emission of smoke complained of was caused by the carelessness of the stoker employed by the defendant to attend to the furnace. The defendant was not personally guilty of any negligence in connection with the matter. It was held that defendant was not criminally responsible for the negligence of his servant, and could not be convicted of the offence: *Chisholm v. Doulton*, 22 Q. B. D. 736; 58 L. J. M. C. 133; 60 L. T. 96; 37 W. R. 749; 53 J. P. 550; 5 T. L. R. 250, 437.

Upon similar words in a local Act, it was held that where the owner used furnaces properly constructed, and employed a competent person to use them, but without his knowledge his servant negligently used them so that smoke was not consumed, the servant only, and not the master, could be convicted: *Willcock v. Sands*, 32 J. T. 565.

A furnace which is properly constructed may be so improperly used as to render the person using it liable to a fine under this section: *Dumfries Commissioners v. Murphy*, 11 Ct. of Sess. Cas., 4th series, p. 694.

As to the recovery of the fines, see section 117, *post*.

(3) Every steam engine and furnace used in the working of any steam vessel on the river Thames, either above London Bridge, or plying to and fro between London bridge and any place on the river Thames westward of the Nore light, shall be constructed so as to consume or burn the smoke arising from such engine and furnace; and if any such steam engine or furnace is not so constructed or being so constructed is wilfully or negligently used so that the smoke arising therefrom is not effectually consumed or burnt, the owner or master of such vessel shall be liable to a fine not exceeding five pounds, and on a second conviction to a fine of ten pounds, and on every subsequent conviction to a fine of double the amount of the fine imposed on the last preceding conviction.

This sub-section is taken from 16 & 17 Vict. c. 128, s. 2, as amended by 19 & 20 Vict. c. 107, s. 1. A steamer plied chiefly in the river, tugging vessels between the docks and parts westward of the Nore light; but also occasionally tugged vessels towards the sea eastward of that point. It was held that the vessel came within the corresponding provisions of the repealed Acts: *Walker v. Evans*, 29 L. J. M. C. 22; 24 J. P. 40. As to the recovery of the fines, see section 117, *post*.

As to the liability of a railway company for smoke nuisances caused by locomotives, see 8 & 9 Vict. c. 20, s. 114, and 31 & 32 Vict. c. 119, s. 16. The latter section was passed to provide for circumstances to which it was held that the former did not apply. See *The Manchester, Sheffield, &c., Railway Company v. Wood*, 2 E. & E. 344; 29 L. J. M. C. 29; 1 L. T. (N.S.) 31; 24 J. P. 38. See also as to a nuisance caused by smoke and noxious vapour from an engine-shed: *Smith v. Midland Railway Company*, 37 L. T. (N.S.) 224; 25 W. R. 861.

(4) Provided that in this section the words "consume or burn the smoke" shall not be held in all cases to mean "consume or burn all the smoke," and the court hearing an information against a person may remit the fine if of opinion that such person has so constructed his furnace as to consume or burn as far as possible all the

SECT. 23. smoke arising from such furnace, and has carefully attended to the same, and consumed or burned as far as possible the smoke arising from such furnace.

This sub-section is taken from 16 & 17 Vict. c. 128, s. 3.

(5) It shall be the duty of every sanitary authority to enforce the provisions of this section, and an information shall not be laid for the recovery of any fine under this section except under the direction of a sanitary authority.

This sub-section is taken from 16 & 17 Vict. c. 128, s. 5, and 19 & 20 Vict. c. 107, s. 3. If the sanitary authority make default in enforcing these provisions, the county council may substitute the necessary proceedings under section 100, *post*, or proceedings may be taken against the sanitary authority under section 101, *post*.

(6) The provisions of this Act with respect to the admission of the sanitary authority into any premises for any purposes in relation to nuisances, and with respect to the giving of information of a nuisance, shall apply in like manner as if they were herein re-enacted, and in terms made applicable to this section.

This provision is taken from 29 & 30 Vict. c. 90, s. 20.

The powers of a sanitary authority with regard to the entry upon premises are regulated by section 115, *post*. As to the giving of information of a nuisance, see section 3, *ante*.

(7) This section shall extend to the port of London, and as respects the port shall be enforced by the port sanitary authority.

As to the port sanitary authority, see section 111, *post*.

14 & 15
16 & 17
Vict. c. 75. (8) Nothing in this section shall alter or repeal any of
Vict. c. 75. the provisions of the City of London Sewers Act, 1851,
16 & 17 or of the Whitechapel Improvement Act, 1853.

cxli.

This saving is repealed from 16 & 17 Vict. c. 128, s. 7.

24.—

SECT. 24.

(a.) Any fireplace or furnace which does not, as far as practicable, consume the smoke arising from the combustible used therein, and which is used for working engines by steam, or in any mill, factory, dyehouse, brewery, bakehouse, or gas-work, or in any manufacturing or trade process whatsoever ; and

(b.) Any chimney (not being the chimney of a private dwelling-house) sending forth black smoke in such quantity as to be a nuisance ;

shall be nuisances liable to be dealt with summarily under this Act, and the provisions of this Act relating to those nuisances shall apply accordingly ;

Provided that the court hearing a complaint against a person in respect of a nuisance arising from a fireplace or furnace which does not consume the smoke arising from the combustible used in such fireplace or furnace, shall hold that no nuisance is created, and dismiss the complaint, if satisfied that such fireplace or furnace is constructed in such manner as to consume as far as practicable, having regard to the nature of the manufacture or trade, all smoke arising therefrom, and that such fireplace or furnace has been carefully attended to by the person having the charge thereof.

The proviso to this section applies only to the fireplaces or furnaces mentioned in clause (a). When, therefore, a person is charged with the offence of allowing a chimney to send forth black smoke in such quantity as to be a nuisance, it is no defence that the furnace was properly constructed and used: *Weekes v. King*, 53 L. T. (N.S.) 51; 49 J. P. 709. An attempt was made to question this decision in *Ex parte Schofield*, 39 W. R. 580, but the Divisional Court, on a motion for a rule to a magistrate to state a case, held that they were bound by *Weekes v. King*, and the Court of Appeal held that the matter being criminal, no appeal lay from this decision. Where a chimney, not

SECT. 24.

Note.

belonging to a private house, sends forth black smoke so as to be a nuisance, it is not necessary in proceedings to abate it to prove that the smoke is injurious to health: *Gaskell v. Bayley*, 80 L. T. (N.S.) 516; 38 J. P. 805. The respondents were summoned for sending forth black smoke on a certain day, from a chimney of premises belonging to them (not being the chimney of a private dwelling-house) in such quantity as to be a nuisance within 29 & 30 Vict. c. 90, s. 19. At the hearing proof was given that black smoke issued from the chimney on the day named so as to be a nuisance, and that the premises were in the occupation of the respondents and used as a factory! No evidence was adduced to show that any inquiry had been made to find out who had charge of the furnaces causing the smoke at the time of the emission and the justices discharged the respondents. It was held that the respondents were properly summoned as the persons by whose permission the nuisance arose, and were responsible as such if the person causing the smoke to issue was their servant: *Barnes v. Akroyd*, 7 Q. B. 474; 41 L. J. M. C. 110; 26 L. T. (N.S.) 692; 20 W. R. 671; 37 J. P. 116. This decision was followed in *Niven v. Greaves*, 54 J. P. 548. There G.'s mill sent forth black smoke more than ten minutes. The furnace was properly constructed and efficient firemen superintended, and the stoker's own negligence was the sole cause of the smoke. G. was summoned for an offence contrary to 38 & 39 Vict. c. 55, s. 96. It was held that the justices were wrong in dismissing the charge, and in holding that G. was not liable. The court distinguished *Chisholm v. Doulton*, which was decided with reference to another enactment reproduced in the last section.

The Towns Improvement Clauses Act, 1847 (10 & 11 Vict. c. 34), s. 108, imposes a penalty on persons so negligently using a furnace as not "to consume the smoke" arising from it. The Birmingham Improvement Act, 1851 (14 & 15 Vict. c. 93), s. 55, incorporates the above section, but provides that the words "consume the smoke" shall not be in all cases read as "consume all the smoke," and that the penalty may be remitted if the person summoned under that section has so constructed or altered his furnace as to "consume as far as possible its smoke," and has carefully attended to the same, and consumed as far as possible its smoke. On an information against the appellant for so negligently using his furnace as not to consume its smoke, it was not shewn that the furnace was improperly constructed; it was found it was capable of consuming more smoke than it, in fact, did; but to use the means provided for that purpose would render it impossible to carry on the appellant's trade with that furnace. The appellant was

convicted. It was held that (assuming the furnace to be properly constructed), that "as far as possible" meant as far as possible consistently with carrying on the trade in which the furnace was employed; and that the appellant was wrongly convicted: *Cooper v. Wooley*, I. R. 2 Ex. 88; 36 L. J. M. C. 27; 15 L. T. (N.S.) 539; 15 W. R. 450; 31 J. P. 135.

SECT. 24.
Note.

In *Barnes v. Norris*, 41 J. P. 150, B. charged N. that black smoke issued from certain chimneys on his premises so as to cause a nuisance. There were five separate chimneys together, each used for a separate purpose. N. objected that the summons was bad for not showing from which chimney the smoke was said to issue. Held that the justices were wrong in allowing this objection, and that they ought to have heard the evidence and made their order as to one or more of the chimneys. *Semel, per CLEAVELAND*, that if there were several chimneys together which sent forth smoke, though each might not of itself send forth sufficient to be a nuisance, yet an offence might be committed.

Workshops and Bakehouses.

25.—(1) Where, on the certificate of a medical officer of health or sanitary inspector, (a) it appears to any sanitary authority that the limewashing, cleansing, or purifying of any workshop (b) (other than a bakehouse), (c) or of any part thereof, is necessary for the health of the persons employed therein, the sanitary authority shall serve notice in writing (d) on the owner or occupier of the workshop to limewash, cleanse, or purify the workshop or part, as the case requires, within the time specified in the notice, and if the person on whom notice is so served fails to comply therewith, he shall be liable to a fine not exceeding five pounds, and to a further fine not exceeding ten shillings for every day during which he continues to make default after conviction; (e) and the sanitary authority may, if they think fit, cause the workshop or part to be limewashed, cleansed, or purified, and may recover in a summary manner the expenses

Workshops and
Bakehouses.
Limewashing
and
washing
of workshops.

SECT. 25. incurred by them in so doing from the person on whom the notice was served. (f)

(a) As to the appointment of medical officers and sanitary inspectors see sections 106, 107, *post*.

(b) This Act does not contain any definition of a "workshop," but it is evident from the next sub-section that it is to be distinguished from a factory and a workplace. The Factory Act, 1878, s. 93, contains definitions of the terms "factory" and "workshop," and no doubt the expression "workshop," as used in the text, is intended to have the same meaning as in that Act. It is there provided that the expression "textile factory" means "Any premises wherein, or within the close or curtilage of which, steam, water, or other mechanical power is used to move or work any machinery employed in preparing, manufacturing, or finishing, or in any process incident to the manufacture of cotton, wool, hair, silk, flax, hemp, jute, tow, china-grass, coocoanut fibre, or other like material, either separately or mixed together, or mixed with any other material, or any fabric made thereof; Provided that print works, bleaching and dye works, lace warehouses, paper mills, flax scutcher mills, rope works, and hat works shall not be deemed to be textile factories." The expression "non-textile factory" means (1) any works, warehouses, furnaces, mills, foundries, or places named in Part I. of the Fourth Schedule (*i.e.*, print works, bleaching and dye works, earthenware works, lucifer-match works, percussion-cap works, cartridge works, paper-staining works, fustian-cutting works, blast furnaces, copper mills, iron mills, foundries, metal and india-rubber works, paper mills, glass works, tobacco factories, letterpress printing works, bookbinding works, flax scutcher mills); (2) Also any premises or places named in Part II. of the said schedule (*i.e.*, hat works, rope works, bakehouses, lace warehouses, ship-building yards, quarries, pit banks) wherein, or within the close or curtilage or precincts of which, steam, water, or other mechanical power is used in aid of the manufacturing process carried on there; (3) Also any premises wherein, or within the close or curtilage, or precincts of which, any manual labour is exercised by way of trade, or for purposes of gain in or incidental to the following purposes, or any of them; that is to say, (a) In or incidental to the making of any article, or of part of any article; or (b.) In or incidental to the altering, repairing, ornamenting, or finishing of any article; or (c.) In or incidental to the adapting for sale of any article, and wherein, or within the close or curtilage or precincts of which, steam, water, or other mechanical power is used in aid of the manufacturing process carried on there. The expression "factory"

means textile factory and non-textile factory, or either of such description of factories. The expression "workshop" means (1) Any premises or place named in Part II. of the Fourth Schedule which are not a factory ; (2) Also any premises, room, or place not being a factory, in which premises, room, or place, or within the close or curtilage or precincts of which premises, any manual labour is exercised by way of trade or for purposes of gain in or incidental to the following purposes, or any of them ; that is to say, (a.) In or incidental to the making of any article or part of any article ; or (b.) In or incidental to the altering, repairing, ornamenting, or finishing of an article ; or (c.) In or incidental to the adapting for sale of an article, and to which, and over which, premises, room, or place the employer of the persons working therein has the right of access or control. A part of a factory or workshop may be taken to be a separate factory or workshop ; and a place solely used as a dwelling shall not be deemed to form part of the factory or workshop. Where a place situate within the close, curtilage, or precincts forming a factory or workshop is solely used for some purpose other than the manufacturing process or handicraft carried on in the factory or workshop, such place shall not be deemed to form part of that factory or workshop, but shall, if otherwise it would be a factory or workshop, be deemed to be a separate factory or workshop, and be regulated accordingly. Any premises or place shall not be excluded from the definition of a factory or workshop by reason only that such premises or place are, or is, in the open air.

SECT. 25.
Note.

(c) The expression "bakehouse" is defined by section 141, *post*.

(d) As to the authentication and service of this notice, see sections 127, 128, *post*.

(e) As to the recovery of this fine, see section 117, *post*.

(f) This means by complaint to a court of summary jurisdiction under the Summary Jurisdiction Acts. See 42 and 43 Vict. c. 49, s. 51, sub-sec. (3).

(2) This section shall apply to any factory which is not subject to the provisions of the Factory and Workshop Act, 1878, and the Acts amending the same, and to any workplace, in like manner as it applies to a workshop.

41 & 42
Vict. c. 16.

As to factories to which the Factory and Workshop Act, 1878, applies, see the note to the preceding sub-section.

The Act contains no definition of a "workplace," nor is the expression defined in the Public Health Act, 1875, or the Factory Act, 1878, though it is used in section 91 of the former, and in section 101

SECT. 25. of the latter Act. It appears to apply to a place where work in the way of a trade or business is carried on, but which fails in some respects to satisfy the definition of a workshop.

Enactments respecting
bake-houses.
41 & 42
Viet. c. 16.
46 & 47
Viet. c. 53.

26.—(1) Sections thirty-four, thirty-five, and eighty-one of the Factory and Workshop Act, 1878, and sections fifteen and sixteen of the Factory and Workshop Act Amendment Act, 1883 (which relate to cleanliness, ventilation, and other sanitary conditions), shall, as respects every bakehouse which is a workshop, be enforced by the sanitary authority of the district in which the bakehouse is situate, and they shall be the local authority within the meaning of those sections.

The expression "bakehouse" is defined by section 141, *post.*

The following are the sections above referred to:—41 Vict. c. 16, s. 34, provides that "where a bakehouse is situate in any city, town, or place containing, according to the last published census for the time being, a population of more than five thousand persons, all the inside walls of the rooms of such bakehouse, and all the ceilings or tops of such rooms (whether such walls, ceilings, or tops be plastered or not) and all the passages and staircases of such bakehouse shall either be painted with oil or varnished, or be limewashed, or be partly painted or varnished and partly limewashed; where painted with oil or varnished, there shall be three coats of paint or varnish, and the paint or varnish shall be renewed once at least in every seven years, and shall be washed with hot water and soap once at least in every six months; where limewashed, the limewashing shall be renewed once at least in every six months. A bakehouse in which there is any contravention of this section shall be deemed not to be kept in conformity with this Act." Section 35 provides that "Where a bakehouse is situate in any city, town, or place containing, according to the last published census for the time being, a population of more than five thousand persons, a place on the same level with the bakehouse, and forming part of the same building, shall not be used as a sleeping place unless it is constructed as follows—that is to say, unless it is effectually separated from the bakehouse by a partition extending from the floor to the ceiling; and unless there be an external glazed window of at least nine superficial feet in area, of which at least four-and-a-half superficial feet are made to open for ventilation. Any person who lets or occupies, or continues to let or knowingly suffers to be occupied,

any place contrary to this section, shall be liable to a fine not exceeding, SECT. 26.

for the first offence, twenty shillings, and for every subsequent offence five pounds."

Section 81 provides that "If a factory or workshop is not kept in conformity with this Act, the occupier thereof shall be liable to a fine not exceeding ten pounds. The court of summary jurisdiction, in addition to or instead of inflicting such fine, may order certain means to be adopted by the occupier within the time named in the order for the purpose of bringing his factory or workshop into conformity with this Act, the court may, upon application, enlarge the time so named; but if, after the expiration of the time as originally named or enlarged by subsequent order, the order is not complied with, the occupier shall be liable to a fine not exceeding one pound for every day that such non-compliance continues." The Factory and Workshop Act, 1883 (46 & 47 Vict. c. 53, s. 15), provides as follows:—"It shall not be lawful to let or suffer to be occupied as a bakehouse or to occupy as a bakehouse, any room or place which was not so let or occupied before the 1st June, 1883, unless the following regulations are complied with:—(i.) No water-closet, earth-closet, privy, or ashpit shall be within or communicate directly with the bakehouse; (ii.) Any cistern for supplying water to the bakehouse shall be separate and distinct from any cistern for supplying water to a water-closet; (iii.) No drain or pipe for carrying off faecal or sewage matter shall have an opening within the bakehouse. Any person who lets or suffers to be occupied or who occupies any room or place as a bakehouse in contravention of this section shall be liable, on summary conviction, to a fine not exceeding forty shillings, and to a further fine not exceeding five shillings for every day during which any room or place is so occupied after a conviction under this section." Section 16 provides as follows:—"Where a court of summary jurisdiction is satisfied, on the prosecution of an inspector or a local authority, that any room or place used as a bakehouse (whether the same was or was not so used before the passing of this Act) is in such a state as to be, on sanitary grounds, unfit for use or occupation as a bakehouse, the occupier of the bakehouse shall be liable, on summary conviction, to a fine not exceeding forty shillings, and on a second or any subsequent conviction not exceeding five pounds. The court of summary jurisdiction, in addition to or instead of inflicting such fine, may order means to be adopted by the occupier, within the time named in the order, for the purpose of removing the ground of complaint. The court may, upon application, enlarge the time so named, but if, after the expiration of the time as originally named or enlarged by subsequent order, the order is not complied with, the occupier shall be liable to a fine not exceeding one pound for every day that such non-compliance continues."

Note.

SECT. 26. The above sub-section is taken from 46 & 47 Viet. e. 53, s. 17.

Note. As to the meaning of the word "workshop," see the note to the preceding section.

(2) For the purposes of this section, the provisions of this Act with respect to the admission of the sanitary authority and their officers into any premises for any purpose in relation to nuisances shall apply in like manner as if they were herein re-enacted and in terms made applicable to this section; and every person refusing or failing to allow the sanitary authority or their officer to enter any premises in pursuance of those provisions for the purposes of this section shall be subject to a fine.

The provisions of this Act with respect to the admission of officers into premises are contained in section 10, *ante*, and section 115, *post*.

Notice to
factory
inspector
respecting
child or
woman in
workshop.

27. If any child, young person, or woman is employed in a workshop, and the medical officer of the sanitary authority becomes aware thereof, he shall forthwith give written notice thereof to the factory inspector for the district.

This Act does not contain any definition of the expression "child" or "young person." The Factory Act, 1878, s. 96, defines a child to be a person under the age of fourteen years, a young person to be a person over fourteen and under eighteen years, and a woman to be a woman over eighteen years of age.

Dairies.
Orders
and regu-
lations for
dairies.

Dairies.

28.—(1) The Local Government Board may make such general or special orders as they think fit for the following purposes, or any of them, that is to say,—

- (a.) For the registration with the county council of all persons carrying on the trade of dairymen;
- (b.) For the inspection of cattle in dairies, and for prescribing and regulating the lighting, ventilation,

cleansing, drainage, and water supply of dairies SECT. 28.
in the occupation of persons carrying on the
trade of dairymen;

- (c.) For securing the cleanliness of milk vessels used for containing milk for sale by such persons;
- (d.) For prescribing precautions to be taken for protecting milk against infection or contamination;
- (e.) For authorising the county council to make bye-laws for the purposes aforesaid, or any of them.

Under the Contagious Diseases (Animals) Act, 1878 (41 & 42 Vict. c. 74, s. 34), the power to make orders for the above purposes was vested in the Privy Council. The power was transferred to the Local Government Board by 49 & 50 Vict. c. 32, s. 9, which also transferred to local authorities the powers formerly exercised by the quarter sessions. In the city of London the local authority were the Corporation, and elsewhere in the metropolis the Metropolitan Board of Works. By the provision in the text the County Council take the duties of the Metropolitan Board of Works, the Corporation retaining their powers under sub-section (4), *infra*. The orders in force are those of the 15th June, 1885, and 1st November, 1886, and the text of them will be found in *Lumley's Public Health*.

The expressions "dairy" and "dairyman" are defined by section 141, *post*.

The bye-laws made by the county council will not be in force in the city, see section 142, *post*. As to the making of bye-laws, see section 114, *post*.

(2) The county council for the purpose of enforcing the said orders and any bye-laws made thereunder shall have the same right to be admitted to any premises as a sanitary authority have under this Act for the purpose of examining as to the existence of a nuisance liable to be dealt with summarily, and the provisions of this Act shall apply accordingly as if they were herein re-enacted and in terms made applicable to this section, and in

SECT. 28.—particular with the substitution of the county council for the sanitary authority.

As to the right of the sanitary authority to be admitted to premises, see section 10, *ante*, and section 115, *post*.

(3) The Local Government Board may by any such order impose the like fines for offences against orders made under this section as may be imposed for offences against the bye-laws of a sanitary authority under this Act.

These fines are not exceeding £5 for each offence, and a further sum not exceeding 40s. for each day after written notice of the offence from the sanitary authority. See section 114, and the provisions of the First Schedule, incorporating section 183 of the Public Health Act, 1875.

(4) In the application of this section to the City of London the mayor, commonalty, and citizens of the city acting by the council shall be substituted for the county council, and their expenses in the execution of this section shall be paid out of the consolidated rate.

See the note to sub-section (1), *supra*.

*Removal
of Refuse.*

Duty of
sanitary
authority
to clean
streets.

Removal of Refuse.

29.—(1) It shall be the duty of every sanitary authority to keep the streets of their district, which are repairable by the inhabitants at large, including the footways, properly swept and cleansed so far as is reasonably practicable, and to collect and remove from the said streets, so far as is reasonably practicable, all street refuse.

The expressions "street" and "street refuse" are defined by section 141, *post*.

This section applies only to streets which are repairable by the inhabitants at large. It does not apply to new streets before they have been paved and taken over, under the provisions of the Metropolis Manage-

ment Acts. Under 18 & 19 Vict. c. 120, s. 125, from which the above **SECT. 29.**
section is taken the duty of the sanitary authority was not limited to **Note.**
streets repairable by the inhabitants at large.

(2) If any such street in the district of any sanitary authority, including the footway, is not properly swept and cleansed, or the street refuse is not collected and removed from any such street so far as is reasonably practicable, as required by this section, the sanitary authority shall be liable to a fine not exceeding twenty pounds.

This fine will be recoverable summarily, see section 117, *post*, and will be paid to the county council, see section 119, sub-section (1). Any person may, apparently, institute proceedings against the sanitary authority.

(3) So much of any Act as requires the occupier or owner of any premises in London to cause the footways and watercourses adjoining the premises to be swept and cleansed is hereby repealed.

Under 57 Geo. 3, c. 29, s. 63, the occupier of premises was required during frost or after a fall of snow once in every day, before 10 A.M., to sweep and cleanse the footway in front of his premises, and for the purposes of that enactment the owner of a house let in tenements was to be deemed the occupier. By 2 & 3 Vict. c. 47, s. 60, sub-sect. (6), every occupier of a house or other tenement, who did not keep sufficiently swept and cleansed all footways and watercourses adjoining to the premises occupied by him was liable to a penalty of 40s., and the owner of an empty or unoccupied tenement was to be deemed the occupier. The 18 & 19 Vict. c. 120, s. 117, required the sanitary authority to sweep and cleanse all footways, but it provided that that enactment should not relieve any occupier of his liability. These provisions are now repealed and the duty of sweeping and cleansing the footways and watercourses now devolves on the sanitary authority as well during frost and snow as at other times.

30.—(1) It shall be the duty *(a)* of every sanitary authority— Removal of house refuse.

SECT. 30. (a.) To secure the due removal at proper periods of house refuse (b) from premises, (c) and the due cleansing out and emptying at proper periods of ashpits, (d) and of earth-closets, privies, and cesspools (if any), in their district, and the giving of sufficient notice of the times appointed for such removal, cleansing out, and emptying, and

(b.) Where the house refuse (b) is not removed from any premises (c) in the district at the ordinary period, (e) or any ashpit, (d) earth-closet, privy, or cesspool in or under any building in the district is not cleansed out or emptied at the ordinary period, (e) and the occupier of the premises serves on the authority a written notice (f) requiring the removal of such refuse, or the cleansing out and emptying of the ashpit, earth-closet, privy, or cesspool, as the case may be, to comply with such notice within forty-eight hours after that service, exclusive of Sundays and public holidays.

(a) The sanitary authority may be fined for neglect of this duty. See the next sub-section. And see, further, as to compelling performance of this duty, sections 100, 101, *post*.

(b) See the definition of "house refuse" in section 141, *post*.

(c) See the definition of "premises" in section 141, *post*.

(d) See the definition of "ashpit" in section 141, *post*.

(e) It may be inferred from the language of section 33, *post*, that the ordinary period is seven days. Under 59 Geo. 3, c. xxix., s. 59, the period was once a week, or oftener in certain cases.

(f) As to the service of this notice, see section 128, sub-section (2), *post*.

(2) If a sanitary authority fail without reasonable cause to comply with this section, they shall be liable to a fine not exceeding twenty pounds.

This fine will be recoverable summarily on the information of any person. The fine, when recovered, will be payable to the county council. See section 119, *post*.

SECT. 30.
Note.

(3) If any person in the employ of the sanitary authority, or of any contractor with the sanitary authority, demands from an occupier or his servant any fee or gratuity for removing any house refuse from any premises, he shall be liable to a fine not exceeding twenty shillings.

As to the recovery of this penalty, see section 117, *post*.

As to the power of the sanitary authority to contract for the removal of house refuse, see the next section.

31. Every sanitary authority shall employ a sufficient number of scavengers, or contract with any scavengers, to appoint whether a company or individuals, for the execution of the duties of the sanitary authority under this Act with respect to the sweeping and cleansing of the several streets within their district, and the collection and removal of street refuse and house refuse, and the cleansing out and emptying of ashpits, earth-closets, privies, and cesspools.

This section is taken from 18 & 19 Vict. e. 120, s. 125, but that section enumerated among the duties of scavengers the cleansing out and emptying of "sewers and drains in or under houses and places within the parish or district." These words have been omitted in the present Act, and it would seem, therefore, that the sanitary authority have no longer any such duty as was formerly imposed upon them by the words here quoted.

The duty of sweeping and cleansing the streets is confined to streets which are repairable by the inhabitants at large. See section 29, *ante*, p. 62.

The expressions "street," "street refuse," "house refuse," and "ashpit," are defined by section 141, *post*.

32. All street refuse and house refuse collected by or on behalf of a sanitary authority shall be the property of the authority.

SECT. 32. that authority, and the authority shall have full power to sell and dispose of the same for the purposes of this Act as they may think proper, and the person purchasing the same shall have full power to take, carry away, and dispose of the same for his own use, and the money arising from the sale thereof shall be applied toward defraying the expenses of the execution of this Act.

This section is taken from 18 & 19 Vict. c. 120, s. 127, and 57 Geo. 3, c. xxix, s. 59.

The expressions "street refuse" and "house refuse" are defined by section 141, *post*.

The expenses of the execution of the Act are defrayed out of the rates mentioned in section 103, *post*, and the money arising from the sale of refuse will be applied in relief of these rates *pro tanto*.

Owners,
&c., to
pay for
removal of
refuse of
trades.

33.—(1) If the sanitary authority are required by the owner or occupier of any premises to remove any trade refuse, that authority shall do so, and the owner or occupier shall pay to that authority a reasonable sum for such removal, and such sum, in case of dispute, shall be settled by the order of a petty sessional court.

This sub-section is a re-enactment of 18 & 19 Vict. c. 120, s. 128.

The expression "trade refuse" is defined by section 141, *post*.

As to the meaning of the expression "petty sessional court," see the note to section 5, sub-section (8), *ante*, p. 21.

(2) If any dispute or difference of opinion arises between the owner or occupier and the sanitary authority as to what is to be considered as trade refuse, a petty sessional court, on complaint made by either party, may by order determine whether the subject matter of dispute is or is not trade refuse, and the decision of that court shall be final.

The cases decided with reference to what is included under the expression "trade refuse" are mentioned in the notes to section 141, *post*.

This sub-section is a re-enactment of 18 & 19 Vict. c. 120, s. 129. A police magistrate, acting under that section, decided that certain ashes from the furnace of an hotel were not "refuse of trade" within the section, and declined to state a case, on the ground that the decision was "final and conclusive," and no point of law arose:—Held, that, in the circumstances, there was a question of law upon the construction of section 129, and that the magistrate was not entitled to require to state a case: *Reg. v. Bridge*, 24 Q. B. D. 609; 59 L. J. M. C. 49; 62 L. T. 297; 38 W. R. 464; 54 J. P. 629.

SECT. 33.
Note.

34.—(1) If the sanitary authority, or any persons employed by them, neglect for the space of seven days to remove all such house refuse as they are required by or in pursuance of this Act to remove, then an occupier of premises (after twenty-four hours' notice given by him to the sanitary authority requiring them to remove the same), may without prejudice to any other proceeding under this Act give away or sell his house refuse; and any person who in pursuance of such gift or sale removes the said house refuse shall not be liable to any fine for so doing.

Provision
on neglect
of seaven-
gers to
remove
dust.

This sub-section is taken from 57 Geo. 3, c. xxix, ss. 60, 61.

It should be observed that this sub-section applies only to "house refuse." An occupier may dispose of his "trade refuse" as he may think fit; but he cannot give away or sell "house refuse," except after the failure of the sanitary authority to remove it after notice. The notice must be given in manner provided by section 128, *post*.

The "other proceeding under this Act," which is open to the occupier, is by way of information to recover the fine, under section 30, *ante* p. 63.

The expressions, "house refuse" and "premises," are defined by section 141, *post*.

(2) Save as aforesaid, if any person other than the sanitary authority or their contractors or servants receives, carries away, or collects any house refuse or street refuse from any premises or street, such person shall be liable to a fine not exceeding five pounds.

"Street refuse" cannot be carried away or collected under any

SECT. 34. circumstances, by any person other than a contractor or servant employed by the sanitary authority. "House refuse" can only be carried away, or collected by such person, under the circumstances mentioned in the preceding sub-section.

Note.

For the procedure for recovery of the fine, see 117, *post*.

Removal
of filth on
requisition
of sanitary
inspector.

35.—(1) Where it appears to a sanitary inspector that any accumulation of any obnoxious matter, whether manure, dung, soil, filth, or other matter, ought to be removed, and it is not the duty of the sanitary authority to remove the same, he shall serve notice on the owner thereof, or on the occupier of the premises on which it exists, requiring him to remove the same, and if the notice is not complied with within forty-eight hours from the service thereof, exclusive of Sundays and public holidays, the matter referred to shall be the property of the sanitary authority, and be removed and disposed of by them, and the proceeds (if any) of such disposal shall be applied in payment of the expenses incurred with reference to the matter removed, and the surplus (if any) shall be paid on demand to the former owner of the matter.

This section corresponds with sections 49, 50, of the Public Health Act, 1875, but it is not identical in terms.

The sanitary authority are bound to remove "street refuse" from public streets under section 29, "house refuse" under section 30, and "trade refuse" under section 33. These expressions are defined by section 141, *post*. Where there is an accumulation, which does not fall within the definition of any of these kinds of refuse, it will be within the provisions of this section.

The notice must be served on the owner of the accumulation, or on the occupier of the premises where it exists, not on the owner of the premises. As to the authentication and service of the notice, see sections 127, 128, *post*.

It does not appear to be necessary to dispose of the accumulation by sale only, but no doubt that should be done where practicable.

(2) The expenses of such removal and disposal, so far as not covered by such proceeds, may be recovered by the sanitary authority in a summary manner from the former owner of the matter removed, or from the occupier, or, where there is no occupier, the owner, of the premises.

The words "in a summary manner" mean in manner provided by the Summary Jurisdiction Acts, by proceedings in a court of summary jurisdiction. See 42 & 43 Vict. c. 49, s. 51, sub-sect. (3).

The expression "owner" is defined by section 141, *post*.

36.—(1) The sanitary authority, if they think fit, may Removal of refuse from stables, cowhouses, &c. employ a sufficient number of scavengers, or contract with any scavengers, whether a company or individuals, for collecting and removing the manure and other refuse matter from any stables and cowhouses within their district, the occupiers of which signify their consent in writing to such removal; Provided that—

(a.) Such consent shall not be withdrawn or revoked without one month's previous notice to the sanitary authority, and

(b.) No person shall be hereby relieved from any fine to which he may be subject for placing dung or manure upon any footways or carriageways, or for having any accumulation or deposit of manure or other refuse matter so as to be a nuisance or injurious or dangerous to health.

This sub-section is a re-enactment of 25 & 26 Vict. c. 102, s. 95. It is within the discretion of the sanitary authority to undertake the removal of manure, &c., under the provision.

As to the manner in which notice withdrawing consent must be given, see section 128, *post*.

Under 57 Geo. 3, c. xxix, s. 64, and 2 & 3 Vict. c. 47, s. 60, it was an offence to place dung, &c., in or upon a street. These sections are not

SECT. 36. re-enaeted, but their place will be taken by the bye-laws made under section 16, *ante*, p. 33. Nuisances arising from accumulation or deposit of manure are dealt with under sections 2, 3, *ante*, p. 2.

(2) Notice may be given by a sanitary authority (by public announcement in the district or otherwise) requiring the periodical removal of manure or other refuse matter from stables, cowhouses, or other premises; and where any such notice has been given, if any person to whom the manure or other refuse matter belongs fails to comply with the notice, he shall be liable without further notice to a fine not exceeding twenty shillings for each day during which such non-compliance continues.

This sub-section is taken from 29 & 30 Vict. c. 90, s. 53. It corresponds with section 50 of the Public Health Act, 1875.

It is not stated how the public announcement is to be made. Probably this may best be done by advertisements and placards posted throughout the district.

As to the recovery of the fine, see section 117, *post*.

*Regula-
tions as to
Water-
closets, &c.*

Regulations as to Water-closets, &c.

37.—(1) It shall not be lawful newly to erect any house(a) or to rebuild any house pulled down to or below the ground floor without a sufficient ashpit(a) furnished with proper doors and coverings,(b) and one or more proper and sufficient water-closets according as circumstances may require,(c) furnished with suitable water supply and water supply apparatus,(d) and with suitable trapped soilpan and other suitable works and arrangements, so far as may be necessary to ensure the efficient operation thereof.

This sub-section is taken from 18 & 19 Vict. c. 120, s. 81, with some modifications which are mentioned below.

(a) The expressions "house" and "ashpit" is defined by section 141, SECT. 37.
post.

(b) The words "furnished with proper doors and coverings" qualify the word "ashpit" only. In the repealed statute they were held to qualify the words "watercloset or privy," as well as "ashpit": *St. James, Clerkenwell (Vestry of), v. Feary*, 24 Q. B. D. 703; 59 L. J. M. C. 82; 62 L. T. (N.S.) 697; 54 J. P. 676.

Note.

(c) Under the repealed Act it was unlawful to erect or rebuild a house without "a sufficient water-closet or privy." But a privy cannot now be used except in cases within sub-sect. 4, *infra*. The sanitary authority may also require more than one water-closet to be provided for a house, if the circumstances require. Under the repealed Act, it was held that a district board could not lay down any general rule, prescribing the use of privies, and requiring water-closets to be erected in the place of privies in compliance with such general rule, and not with reference to the particular circumstances of the case. When, therefore, the board were proceeding to erect water-closets in default of the owner, it was held that this proceeding could not be supported: *Tinkler v. Wandsworth District Board of Works*, 27 L. J. Ch. 342; 2 De G. & J. 361; 20 L. T. (o.s.) 146; 22 J. P. 223. This decision is only now applicable in so far as it decides that the requirements of the sanitary authority must be determined with reference to the circumstances of each case.

(d) It may be mentioned that the absence of water fittings may render the house a nuisance. See section 2, sub-sect (1) (f), *ante*, p. 2.

(2) If any person offends against the foregoing enactment of this section, he shall be liable to a fine not exceeding twenty pounds.

As to the recovery of this penalty, see section 117, *post*.

(3) If at any time it appears to the sanitary authority that any house, (a) whether built before or after the commencement of this Act, is without such ashpit or water-closets as aforesaid, (b) the sanitary authority shall cause notice (c) to be served on the owner (d) or occupier of the house, requiring him forthwith, or within such reasonable time as is specified in the notice, to provide the same in

SECT. 37. accordance with the directions in the notice ;(e) and if the notice is not complied with, the said owner or occupier shall be liable to a fine not exceeding five pounds, and a further fine not exceeding forty shillings for each day during which the offence continues ;(f) or the sanitary authority, if they think fit, in lieu of proceeding for a fine, may enter on the premises and execute such works as the case may require, and may recover the expenses incurred by them in so doing from the owner of the house.(g)

(a) See the definition of the expression "house" in section 141, *post*.

(b) It is for the sanitary authority to decide whether the ashpit or water-closets are, in fact, sufficient.

(c) As to the authentication and service of this notice, see sections 127, 128, *post*.

(d) See the definition of the expression "owner" in section 141, *post*.

(e) This notice must be given with reference to the circumstances of each particular case ; the sanitary authority cannot lay down general rules applicable to every case. On the other hand, when there is not a sufficient ashpit or water-closet, it is entirely in their discretion to prescribe what must be done under the circumstances : *Tinkler v. Wandsworth District Board of Works, supra* ; *St. Luke (Vestry of) v. Lewis*, 31 L. J. M. C. 73 ; 1 B. & S. 865 ; 5 L. T. (N.S.) 608 ; 26 J. P. 262.

(f) As to the recovery of this penalty, see section 117, *post*.

(g) As to the recovery of these expenses, see section 117, *post*.

(4) Provided that—

(a.) Where sewerage or water supply sufficient for a water-closet is not reasonably available, this section shall be complied with by the provision of a privy or earth-closet; and

(b.) Where a water-closet has before the commencement of this Act been and is used in common by the inmates of two or more houses, and in the

opinion of the sanitary authority may continue SECT. 37.
to be properly so used, they need not require a
water-closet to be provided for each house.

The first proviso is an amendment of the previous law. Under 18 & 19 Vict. c. 120, s. 81, a privy could always be provided instead of a water-closet; and an earth-closet would not have satisfied either description.

The second proviso is also an amendment of the previous law. Under 18 & 19 Vict. c. 120, s. 81, it was not necessary to provide a separate water-closet for each house, if it had previously been used for two or more houses, or in the opinion of the sanitary authority it might be so used. Henceforth it is not sufficient that it has been used in common before the Act, unless the sanitary authority are of opinion that it may properly continue to be so used.

(5) Any person who thinks himself aggrieved by any notice or act of a sanitary authority under this section may appeal to the county council, whose decision shall be final.

This is taken from 18 & 19 Vict. c. 120, s. 211, and 25 & 26 Vict. c. 102, s. 29. It was held that the jurisdiction to interfere by injunction was not vested by these sections: *Tinkler v. Wandsworth District Board of Works, supra*. As to the procedure on appeal, see section 126, *post*.

Under the corresponding provisions of the repealed Acts, a vestry gave notice to the respondent, requiring him to furnish proper doors and coverings to a water-closet; the respondent did not comply with the order, and did not appeal to the county council; the vestry then summoned the respondent. The magistrate held that the order of the vestry was wrongly made, and dismissed the summons. It was held, on a case stated, that the respondent's proper remedy, if he objected to the order of the vestry, was by appealing to the county council; and, as he had not done so, the only questions for the decision of the magistrate were: whether the order of the vestry had, in fact, been made, and whether it had been disobeyed, and that if he decided those questions in the affirmative, he was bound to convict: *Vestry of St. James and St. John, Clerkenwell, v. Feary*, 24 Q. B. D. 703; 59 L. J. M. C. 82; 62 L. T. (N.S.) 697; 54 J. P. 676.

There is no appeal to the county council from the commissioners of sewers. See section 133, *post*.

SECT. 38.

Sanitary
conveni-
ences for
manufac-
tories, &c.

38.—(1) Every factory, workshop, and workplace,(a) whether erected before or after the passing of this Act, shall be provided with sufficient and suitable accommodation in the way of sanitary conveniences,(b) regard being had to the number of persons employed in or in attendance at such building, and also where persons of both sexes are, or are intended to be, employed, or in attendance, with proper separate accommodation for persons of each sex.

This section corresponds to section 22 of the Public Health Acts Amendment Act, 1890 (53 & 54 Vict. c. 59).

(a) For the meaning of these words, see the notes to section 25, *ante*, p. 56.

(b) The expression "sanitary conveniences" is defined by section 141, *post*.

(2) Where it appears to a sanitary authority that this section is not complied with in the case of any factory, workshop, or workplace, the sanitary authority shall, by notice(a) served on the owner(b) or occupier of such factory, workshop, or workplace, require him to make the alterations and additions necessary to secure such compliance, and if the person served with such notice fails to comply therewith, he shall be liable to a fine not exceeding twenty pounds, and to a fine not exceeding forty shillings for every day after conviction during which the non-compliance continues.(c)

(a) As to the authentication and service of this notice, see sections 127, 128, *post*.

(b) The expression "owner" is defined by section 141, *post*.

(c) As to the recovery of these fines, see section 117, *post*.

Bye-laws
as to
water-
closets,
&c.

39.—(1) The county council(a) shall make bye-laws(b) with respect to water-closets, earth-closets, privies, ash-pits,(c) cesspools, and receptacles for dung, and the

proper accessories thereof in connexion with buildings, **SECT. 39.**
whether constructed before or after the passing of this
Act.

(2) Every sanitary authority shall make bye-laws with respect to the keeping of water-closets supplied with sufficient water for their effective action.

(a) The county council here referred to is the London County Council, see section 141, *post*. The bye-laws of the county council will not apply in the City of London. See section 133, *post*. As to the period within which the first bye-laws must be made, see section 142, *post*.

(b) As to the making of bye-laws, see section 114, *post*.

(c) The expression "ashpit" is defined by section 138, *post*.

(3) It shall be the duty of every sanitary authority to observe and enforce the bye-laws under this section; and any directions given by the sanitary authority under this Act shall be in accordance with the said bye-laws, and so far as they are not so in accordance shall be void.

As the sanitary authority must enforce the bye-laws, the proviso section 114, *post*, relating to the making of bye-laws, will apply.

The directions, above referred to, are those which are given by a sanitary authority for the execution of works prescribed by them. See, for example, section 37, sub-section (3), *ante*, p. 71, and section 40, sub-section (2), and section 41, sub-section (1), *post*.

40.—(1) The sanitary authority may examine any of the following works, that is to say, any water-closet, earth-closet, privy, ashpit, or cesspool, and any water supply, sink, trap, siphon, pipe, or other works or apparatus connected therewith, upon any premises within their district, and for that purpose, or for the purpose of ascertaining the course of a drain, may at all reasonable times by day, after twenty-four hours' notice has been served on the occupier of the premises, or if they are unoccupied

SECT. 40. on the owner, or in case of emergency without notice, — enter on any premises, and cause the ground to be opened in any place they think fit, doing as little damage as may be.

This sub-section is, in substance, a re-enactment of 18 & 19 Vict. c. 120, s. 82; the enactment is, however, extended to an ashpit (an expression defined by section 141, *post*).

The expressions "premises" and "owner" are defined by section 141, *post*.

As to the authentication and service of the notice, see sections 127, 128, *post*.

The mode of entry is regulated by section 115, *post*.

(2) If any such work as aforesaid is found on examination to be in accordance with this Act and the bye-laws of the county council and sanitary authority and directions of the sanitary authority given in any notice under this Act, and in proper order and condition, the sanitary authority shall cause the same to be re-instated and made good as soon as may be, and shall defray the expenses of examination, re-instating, and making good the same, and pay full compensation for all damages or injuries done or occasioned by the examination; but if on examination any such work is found not to be in proper order or condition, or not to have been made or provided by any person according to the said bye-laws and directions, or to be contrary to this Act, the reasonable expenses of the examination shall be repaid to the sanitary authority by the person offending, and may be recovered by that authority in a summary manner.

The bye-laws of the county council, above referred to, are evidently those to be made under section 39. It is not clear what bye-laws of the sanitary authority are referred to, unless they are the bye-laws made under section 16. The directions of the sanitary authority must be in accordance with the bye-laws. See section 39, sub-section (3), *ante*, p. 75.

The reference to a noticee appears to imply that the examination may be made for the purpose of ascertaining whether the requirements of the notice have been complied with.

SECT. 40.
Note.

The above sub-section is taken from 18 & 19 Viet. c. 120, s. 84. Under that Act, sections 225, 226, compensation is to be assessed by justees. There is no corresponding provision in this Act; and accordingly it would seem that a claim for compensation must be enforced by action.

The words "in a summary manner" mean in manner provided by the Summary Jurisdiction Acts (42 & 43 Viet. c. 49, s. 51, sub-section (3)). And see section 117, *post*.

41.—(1) In any of the following cases—

- (a.) If, on such examination as in the preceding section mentioned, any such work as therein mentioned is found not to have been made or provided by any person according to the bye-laws of the county council and sanitary authority, and the directions of the sanitary authority given in any notice under this Act, or to be contrary to this Act, (a) or
- (b.) If a person, without the consent of the sanitary authority, constructs or rebuilds any water-closet, earth-closet, privy, ashpit, or cesspool which has been ordered by them either not to be made, or to be demolished, (b) or
- (c.) If a person discontinues any water supply without lawful authority, (c) or
- (d.) If a person destroys any sink, trap, siphon, pipe, or any connected works or apparatus as aforesaid either without lawful authority or so that the destruction creates a nuisance or is injurious or dangerous to health, (d)

Penalty on
persons
improper-
ly
making or
altering
water-
closets,
&c.

every person so offending shall be liable to a fine not exceeding ten pounds; (e) and if he does not, within four-

SECT. 41. *teen* days after notice *(f)* is served on him by the sanitary authority, or within any further time allowed by that authority or appearing to a petty sessional court *(g)* necessary for the execution of the works cause such water-closet, earth-closet, privy, ashpit, or cesspool to be altered or re-instated in conformity with the said bye-laws and directions, *(h)* or, as the case may be, to be demolished, or such water supply to be renewed, or such sink, trap, siphon, pipe or other connected works or apparatus to be restored, such person shall be liable to a fine not exceeding twenty shillings for each day during which the offence continues; or the sanitary authority, if they think fit, in lieu of proceeding for a fine, may enter on the premises and cause the work to be done, and the expenses thereof shall be paid by the person who has so offended. *(i)*

(a) This clause is taken from 18 & 19 Vict. e. 120, s. 83. And see the preceding section of this Act.

(b) This clause is also taken from 18 & 19 Vict. e. 120, s. 83, with the omission of the words, "sewer" and "drain." It is the duty of the sanitary authority themselves to repair and cleanse sewers under 18 & 19 Vict. e. 120, s. 69, and nuisances arising from drains may be dealt with under the nuisance clauses of this Act. The word "ashpit," which appears in the above clause, and is defined by section 141, *post*, was not in 18 & 19 Vict. e. 120, s. 83.

It is not quite clear what is the order referred to in the clause. It may, perhaps, be an order under section 4, or under the bye-laws.

(c) This clause is also taken from 18 & 19 Vict. e. 120, s. 83. It may be observed that the want of proper water fittings may itself be a nuisance liable to be dealt with summarily under section 3.

(d) This clause is an expansion of the words used in 18 & 19 Vict. e. 120, s. 83.

(e) As to the recovery of this fine, see section 117, *post*.

(f) As to the authentication and service of this notice, see sections 127, 128, *post*.

(g) For the meaning of the expression "petty sessional court," see the note to section 5, sub-section (8), *ante*, p. 21. The court may apparently grant an extension of time in proceedings to recover the fine.

(h) These directions must be in accordance with the bye-laws. See **SECT. 41.** section 39, sub-section (2), *ante*, p. 75.

(i) These expenses are recoverable in a summary manner under section 117, *post*. See also section 121, as to the recovery of expenses from the owner of premises.

Note.

(2) If, on such examination as aforesaid, any water-closet, earth-closet, privy, ashpit, or cesspool, or any water supply, sink, trap, siphon, pipe, or any of the connected works or apparatus as aforesaid, appears to be in bad order and condition, or to require cleansing, alteration, or amendment, or to be filled up, the sanitary authority shall cause notice to be served on the owner or occupier of the premises, upon or in respect of which the inspection was made, requiring him forthwith, or within a reasonable time specified in the notice, to do what is necessary to place the work in proper order and condition; and if such notice is not complied with, the said owner or occupier shall be liable to a fine not exceeding five pounds, and to a further fine not exceeding forty shillings for each day during which the offence continues; or the sanitary authority, if they think fit, in lieu of proceeding for a fine, may enter on the premises and execute the works, and the expenses incurred by them in so doing shall be paid to them by the owner or occupier of the premises.

This sub-section is taken from 18 & 19 Vict. c. 120, s. 85.

As to the authentication and service of the notice, see sections 127, 128, *post*.

As to the recovery of the fines, see section 117, *post*. The expenses are recoverable in a summary manner under section 117, *post*, or if recoverable from an owner of premises, in manner provided by section 121, *post*.

(3) Any person who thinks himself aggrieved by any notice or act of a sanitary authority under this section

SECT. 41. in relation to any water-closet, earth-closet, privy, ashpit, or cesspool, may appeal to the county council, whose decision shall be final.

This provision is taken from 18 & 19 Viet. c. 120, s. 211. It is in terms similar to section 37, sub-section (5). See the notes to that sub-section. As to the procedure on appeal, see section 126, *post*. There is no appeal to the county council from the commissioners of sewers. See section 133, *post*.

Improper construction or repair of water-closet or drain.

42. If a water-closet or drain is so constructed or repaired as to be a nuisance or injurious or dangerous to health, the person who undertook or executed such construction or repair shall, unless he shows that such construction or repair was not due to any wilful act, neglect, or default, be liable to a fine not exceeding twenty pounds :

Provided that where a person is charged with an offence under this section he shall be entitled, upon information duly laid by him, to have any other person, being his agent, servant, or workman, whom he charges as the actual offender, brought before the court at the time appointed for hearing the charge, and if he proves to the satisfaction of the court that he had used due diligence to prevent the commission of the offence, and that the said other person committed the offence without his knowledge, consent, or connivance, he shall be exempt from any fine, and the said other person may be summarily convicted of the offence.

This section is new.

The fine is recoverable summarily under section 117, *post*.

As to the words "a nuisance or injurious to health," see the note to section 2, *ante*, p. 4.

The proviso resembles that in 41 & 42 Viet. c. 16, s. 87, and some other Acts. It is intended for the protection of an employer against the wrongful acts of his workmen, but if an employer is charged, the burden of proof that he is personally innocent will lie upon him.

43.—(1) Every sanitary authority—**SECT. 43.**

(a.) Shall drain, cleanse, cover, or fill up, or cause to be drained, cleansed, covered, or filled up all ponds, pools, open ditches, drains, and places containing or used for the collection of any drainage, filth, water, matter, or thing of an offensive nature, or likely to be prejudicial to health, which may be situate in their district; and

(b.) Shall cause notice to be served on the person causing any such nuisance, or on the owner or occupier of any premises whereon the same exists, requiring him, within the time specified in such notice, to drain, cleanse, cover, or fill up such pond, pool, ditch, drain, or place, or to construct a proper drain for the discharge of such filth, water, matter, or thing, or to execute such other works as the case may require.

This section takes the place of 18 & 19 Vict. c. 120, s. 86, and 18 & 19 Vict. c. 121, ss. 21, 22.

It appears to be in the discretion of the sanitary authority whether they will themselves act under clause (a), or serve a notice under clause (b). See sub-section (2), *infra*. The expressions "owner" and "premises" are defined by section 141, *post*.

As to the authentication and service of the notice, see sections 127, 128, *post*.

(2) If the person on whom such notice is served fails to comply therewith, he shall be liable to a fine not exceeding five pounds, and a further fine not exceeding forty shillings for each day during which the offence continues; or the sanitary authority if they think fit, in lieu of proceeding for a fine, may enter on the premises and execute such works as may be necessary for the

SECT. 43. abatement of the nuisance, and may recover the expenses thereby incurred from the owner of the premises (a): Provided that—

- (a.) The sanitary authority, where they think it reasonable, may defray all or any portion of the said expenses, as expenses of sewerage are to be defrayed by that authority; (b) and
- (b.) Where any work which a sanitary authority does or requires to be done in pursuance of this section interferes with or prejudicially affects any ancient mill, or any right connected therewith, or other right to the use of water, the sanitary authority shall make full compensation to all persons sustaining damage thereby, in manner provided by the Metropolis Management Act, 1855, (c) or if they think fit, may purchase such mill, or any such right connected therewith, or other right to the use of water; and the provisions of the said Act with respect to purchases by the sanitary authority shall be applicable to every such purchase as aforesaid. (d)

18 & 19
Viet.
c. 120.

(a) The fine is recoverable summarily under section 117. The expenses may be recovered in the same way or in manner provided by section 121, *post*.

(b) This proviso will apply even where the works have been done in default of compliance with a notice.

The expenses of sewerage are defrayed out of a sewers rate made under 18 & 19 Vict. c. 120, s. 161. Public buildings and void spaces (except places of worship and burial grounds) are exempt from such rate (section 162), and land used as arable, meadow, or pasture ground, &c., is rateable at one-fourth part only of its value (section 163). There are also some other exemptions under section 164.

(c) Compensation is determined by two justices under 18 & 19 Vict. c. 120, ss. 225, 226, unless the amount in dispute exceeds 50*l.*, in which case it must be determined by arbitration, in manner provided by the Lands Clauses Acts.

A summons before justices to assess compensation need not be taken SECT. 43. out within the six months limited by 11 & 12 Vict. e. 43, s. 11 : *Reg. v. Edwards*, 13 Q. B. D. 586 ; 53 L. J. M. C. 149 ; 51 L. T. (N.S.) 856 ; 49 J. P. 117. Note.

(d) The provisions of 18 & 19 Vict. e. 120, as to the purchase of lands, are contained in sections 150—153. Under these sections, land may be purchased in the ordinary way by agreement, or, with the consent of a Secretary of State, compulsorily, in manner provided by the Lands Clauses Acts.

(3) Any person who thinks himself aggrieved by any notice or act of a sanitary authority under this section in relation to the construction, covering, filling up, or other alteration of any drain may appeal to the county council, whose decision shall be final.

This provision is taken from 18 & 19 Vict. e. 120, s. 211. See the similar provision in section 37, sub-section (5), *ante*, and the notes thereto.

As to the procedure on appeal, see section 126, *post*. There is no appeal to the county council from the commissioners of sewers. See section 133, *post*.

44.—(1) Every sanitary authority may provide and maintain public lavatories and ash-pits and public sanitary conveniences other than privies, in situations where they deem the same to be required, and may supply such lavatories and sanitary conveniences with water, and may defray the expense of providing such lavatories, ash-pits, and sanitary conveniences, and of any damage occasioned to any person by the erection or construction thereof, and the expense of keeping the same in good order, as if they were expenses of sewerage.

Power to
sanitary
authority
to provide
public
conve-
niences.

This section is an amendment of 18 & 19 Vict. e. 120, s. 88, in so far as it extends to lavatories and ash-pits, and omits all mention of privies. A similar provision is contained in the Public Health Act, 1890, section 20.

The expressions "ash-pits" and "sanitary conveniences" are defined by section 141, *post*. There is no definition of a lavatory, but it is

SECT. 44. submitted that it means a place for washing, and not a urinal, which is included in the definition of a sanitary convenience.

Note.

In *Biddulph v. The Vestry of St. George, Hanover Square* (33 L. J. Ch. 411; 3 Dc G. J. & S. 493; 8 L. T. (N.S.) 558; 2 N. R. 212), the defendants, assuming to act under the corresponding section of 18 & 19 Vict. c. 120, passed a resolution to erect a urinal in Grosvenor Place, adjacent to the wall of Buckingham Palace; STUART, V.C., being of opinion that the erection of a urinal at that spot would be a serious injury to property in the neighbourhood, upon bill filed by a resident nearly opposite to the site of the proposed urinal, granted an injunction restraining the vestry from erecting it. Upon appeal, the Lords Justices being of opinion that the evidence did not show that the proposed urinal would be in point of law a nuisance, or that the vestry were exceeding their statutory powers in what they proposed to do, or that they were influenced by improper motives, discharged the order for the injunction. In *Mason v. Wallasey Local Board*, L. J. Notes of Cases, 1876, p. 212, JESSEL, M.R., held that in the absence of improper motives, an absolute discretion was given to a sanitary authority in choosing the site (and see the decision of POLLOCK, B., in *Spicer v. The Mayor of Margate*, 24 L. J. 821). In *Vernon v. The Vestry of St James, Westminster* (16 Ch. D. 449; 50 L. J. Ch. 81; 44 L. T. (N.S.) 229), it was held by MALINS, V.C., that any question, whether one place or another, was more fit for the erection of a urinal must be left to the decision of the vestry; but that the vestry would be controlled by the court if they acted in an unreasonable manner, and occasioned a nuisance to the owners of adjoining property. And it was held by the Court of Appeal, that as the erection of a urinal was not necessarily a nuisance, the provision of the Act authorising the vestry to erect urinals did not empower them to erect one where it would be a nuisance to the owners of adjoining property, there being no words in the Act which, expressly or by necessary implication, authorised them to create a nuisance. Each case will, therefore, depend on its own circumstances. In a recent case a local board, assuming to act under this section, erected a public urinal, partly upon a highway and partly upon a strip of land belonging to the plaintiff, and so near to other adjoining land of the plaintiff as to be a nuisance to her and her tenants, and to depreciate the value of her property; it was held that the plaintiff was entitled to a mandatory injunction to restrain the board from continuing the urinal upon the land, or so near thereto, as to cause injury or annoyance to her and her tenants: *Sellors v. Matlock Bath Local Board*, 14 Q. B. D. 928; 52 L. T. (N.S.) 762.

As to how the expenses of sewerage are to be defrayed, see the note SECT. 44, to section 43, sub-section (2).

Note.

(2) For the purpose of such provision the sub-soil of any road, exclusive of the footway adjoining any building or the curtilage of a building, shall be vested in the sanitary authority.

This is a new and somewhat singular provision. By 18 & 19 Vict. c. 120, s. 96, all streets, which are highways in the metropolis, are vested in the district boards or vestries as the case may be. This vesting does not give the district boards or vestries all the powers of absolute owners of the soil, but only such powers as are essential for making and maintaining the street, and accordingly they have certain powers below the surface and above it. The meaning of the word "vest" will more clearly appear from the decided cases which are set out below. Under the text, however, for the limited purposes of this section, the sub-soil of any road, exclusive of the footway, vests in the sanitary authority. If the road is a highway repairable by the inhabitants at large, the sub-soil, inclusive of the footway, appears already vested, but the text appears to extend to roads, whether highways or not.

The following are the cases decided with reference to the meaning of the vesting of a street or road:—

In *Hinde v. Chorlton*, L. R. 2 C. P., at p. 116, WILLES, J., referring to the words *rest in* as used in a local Act, said: "There is a whole series of authorities in which words which in terms vested the freehold in persons appointed to perform some public duties, such as canal companies and boards of health, have been held satisfied by giving to such persons the control over the soil which was necessary to the carrying out of the objects of the Act without giving them the freehold. In *Stracey v. Nelson*, 12 M. & W. 535; 13 L. J. Ex. 97, it was provided by an Act that certain lands should be *vested* in the Commissioners of Sewers, and the court held, notwithstanding, that only the control over the land, and not the freehold, passed to them." In *Bugshaw v. Buxton Local Board*, 1 Ch. D., at p. 222, JESSEL, M.R., said that by the term *vested* he meant *vested sub modo*, as far as a highway can be, not necessarily giving to the local authority the right to the soil. The words *rest in* do not give the property in the street, but merely the property in the surface of the street, and in such part of the soil as is or can be used for the ordinary purposes of a street: *Coverdale v. Charlton*, 4 Q. B. D. 104; 48 L. J. Q. B. 128; 40 L. T. (N.S.) 88; 26 W. R. 687; 43 J. P. 268. In that case, by an award made under an

SECT. 44. Inclosure Act passed in 1766, two private roads, E. & H., were set out.

Note.

About 1818 the road E. became a public highway. Down to 1863 the surveyors of highways for the parish of C., within which E. and H. were situate, had from time to time let the pasturage upon E. and H. to various persons. A local board was formed in 1863 for the parish of C., who in 1876 let the pasturage on E. and H. to the plaintiff. He thereupon commenced to depasture the herbage with his cattle on the roads. The defendant interfered with the plaintiff's enjoyment of the pasturage. It was held that the property in the soil of E., being a street, so far vested in the local board that they could demise the right of pasturage thereon to the plaintiff, who was entitled to maintain an action. It was held also that the local board having no power to demise H., being a private way, the plaintiff had not sufficient exclusive possession as occupier to enable him to maintain an action. In a subsequent case, JAMES, L.J., explained this decision as to the meaning of the words *vest in* as follows:—"What that case decided, and all that it was necessary to decide in that case, was that something more than an easement passed to the local board, and that they had some right of property in and on and in respect of the soil, which would enable them as owners to bring a possessory action against trespassers. Now, what was that something more? It is impossible to read any of the three judgments delivered on that occasion without seeing that in the view of the learned judges the soil and freehold, in the ordinary sense of the words 'soil and freehold,' that is to say, the soil from the centre of the earth up to an unlimited extent in space, did not pass, and that no *stratum* or portion of the soil, defined or ascertainable like a vein of coal, or stratum of ironstone, or anything of that kind, passed, but the board had only the surface, and with the surface such right below the surface as was essential to the maintenance and occupation and exclusive possession of the street, and the making and maintaining of the street for the use of the public": *Rolls v. St. George the Martyr, Southwark (Vestry of)*, 14 Ch. D. 785; 49 L. J. Ch. 691; 43 L. T. (N.S.) 140; 28 W. R. 867; 44 J. P. 680. In that case the plaintiff having, with the sanction of the Metropolitan Board of Works, made a new street over his land, upon which land were two old streets, N. and A., an order was made at quarter sessions for stopping up part of N. street as unnecessary, and an order was also made for diverting a part of A. street, and opening the new street in lieu thereof. The vestry of the parish gave notice to the plaintiff that he must not convert to his own use the stopped up part of N., nor stop up A., or convert any part of the soil of it to his own use until he had purchased the same from the vestry. It was held by the Court of Appeal, reversing the decision

of the Master of the Rolls, that under 18 & 19 Vict., c. 120, s. 96, all streets being for the time being highways, are vested in the vestry, but only so long as they are highways, and that when they cease to be highways by being legally stopped up or diverted, the interest of the vestry determines. And it was, therefore, held that the plaintiff was entitled to convert to his own use the stopped up part of N., and the diverted part of A., subject, as to A., to his first obtaining a certificate under 5 & 6 Vict. c. 50, s. 91, that the substituted street had been completed and put into good condition and repair. Where a street was carried across a railway situate in a deep cutting, the bridge being erected pursuant to the Railways Clauses Act, 1845 (8 & 9 Vict. c. 20, ss. 46—51), it was held that the vesting of the street in the vestry, under 18 & 19 Vict. c. 120, s. 105, did not give the vestry any property in the bridges or its fences, but merely vested in them the earringeway and footpaths and the materials of which these were made : *Great Eastern Railway Company v. Hackney Board of Works*, 8 App. Cas. 687 ; 52 L. J. M. C. 105 ; 49 L. T. (N.S.) 509 ; 48 J. P. 52. The vesting of the streets in the urban authority under this section does not confer upon them such a property in the streets as to entitle them to maintain an action for an injunction against the erection of a telephone wire across a street, the telephone wire being erected at a great height, and causing no appreciable danger to the public or to the traffic in the street : *Wandsworth District Board of Works v. United Telephone Company*, 13 Q. B. D. 904 ; 53 L. J. Q. B. 449 ; 51 L. T. (N.S.) 148 ; 32 W. R. 776 ; 48 J. P. 676.

45.—(1) Where a sanitary authority provide and maintain any public lavatories, ashpits, or sanitary conveniences, (a) such authority may—

(a.) Make regulations (b) with respect to the management thereof, and bye-laws (c) as to the decent conduct of persons using the same ; and

(b.) Let the same for any term not exceeding three years at such rent and subject to such conditions as they may think fit ; (d) and

(c.) Charge such fees for the use of any lavatories or

Note.

Regula-
tions as to
public
sanitary
conveni-
ences.

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water-closets provided by them as they may think proper.(c)

(a) The sanitary authority may provide lavatories and similar conveniences under the preceding section.

(b) This Act does not contain any provision for the making of regulations. But the regulations do not require confirmation like bye-laws.

(c) As to the making of bye-laws, see section 114, *post*. As to the period within which the first bye-laws must be made, see section 142, *post*.

(d) The sanitary authority may apparently let a lavatory, ashpit, or sanitary convenience to a lessee, who may charge fees for the use thereof; but the sanitary authority cannot themselves charge fees, except for the use of a lavatory or water-closet.

(2) No public lavatory, ashpit, or sanitary convenience shall be erected in or accessible from any street without the consent in writing of the sanitary authority, who may give their consent upon such terms as to the use thereof or the removal thereof at any time, if required by the sanitary authority, as they may think fit.

The expression "street" is defined by section 141, *post*.

This sub-section applies only to public conveniences erected by private persons.

(3) If any person erects a lavatory, ashpit, or sanitary convenience in contravention of this section,(a) and after notice to that effect served by the sanitary authority does not remove the same, he shall be liable to a fine not exceeding five pounds, and to a fine not exceeding twenty shillings for every day during which the offence continues after a conviction for the offence.(b)

(a) That is to say, without the consent or contrary to the terms imposed by the sanitary authority under the preceding sub-section.

(b) As to the recovery of the fines see section 117, *post*. It should be observed that the daily penalty is only incurred after conviction, not from the date of notice as in other cases under this Act.

(4) Nothing in this section shall extend to any lavatory SECT. 45. or sanitary convenience now or hereafter erected by any railway company within their railway station yard or the approaches thereto.

46. The following provisions shall have effect with respect to any sanitary convenience used in common by the occupiers of two or more separate dwelling-houses, or by other persons :— Sanitary conveniences used in common.

(1) If any person injures or improperly fouls any such sanitary convenience, or anything used in connexion therewith, he shall for each offence be liable to a fine not exceeding ten shillings ;

This provision is taken from 53 & 54 Viet. e. 59, s. 21.

The expression “sanitary convenience” is defined by section 141, *post.*

A water-closet can only be used in common by the owners of two or more houses where it has been so used before this commencement of this Act, and in the opinion of the sanitary authority it may properly continue to be so used. See section 37, sub-section (4), *ante*, p. 72.

As to the recovery of the fine, see section 117, *post.*

(2) If any such sanitary convenience or the approaches thereto, or the walls, floors, seats, or fittings thereof, is or are, in the opinion of the sanitary authority or of their sanitary inspector or medical officer of health, in such a state as to be a nuisance or annoyance to any inhabitant of the district for want of the proper cleansing thereof, such of the persons having the use thereof in common as may be in default, or, in the absence of proof satisfactory to the court as to which of the persons having the use thereof in common is in default, each of those persons shall be liable to a fine not exceeding ten shillings, and to a fine

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not exceeding five shillings for every day during which the offence continues after a conviction for the offence.

See the notes to the preceding sub-section.

As to the recovery of the fine, see section 141, *post*. The daily penalty is not incurred until after the conviction. See a similar provision in section 45, sub-section (3).

*Unsound
Food.*

Inspection and destruction of unsound meat, &c. **47.**—(1) Any medical officer of health or sanitary inspector may at all reasonable times (a) enter any premises (b) and inspect and examine

- (a.) Any animal (c) intended for the food of man which is exposed for sale, or deposited in any place (e) for the purpose of sale, or of preparation for sale, and
- (b.) Any article, whether solid or liquid, intended for the food of man, (d) and sold or exposed for sale or deposited in any place (e) for the purpose of sale or of preparation for sale,

the proof that the same was not exposed or deposited for any such purpose or was not intended for the food of man, resting with the person charged; (f) and if any such animal or article appears to such medical officer or inspector to be diseased, or unsound, or unwholesome, or unfit for the food of man, (g) he may seize and carry away the same himself or by an assistant, in order to have the same dealt with by a justice. (h)

This section replaces 26 & 27 Vict. c. 117, s. 2, and 37 & 38 Vict. c. 89, s. 54, with some amendments. A similar provision is contained in the Public Health Act, 1875, ss. 116, 117, as amended by the Public Health Act, 1890, s. 28.

(a) The question whether any given time is reasonable or not must depend upon the circumstances of each case. In *Small v. Bickley*, 32

L. T. (N.S.) 726; 39 J. P. 442, the appellant, a butcher, while at his residence, half a mile from his shop on a Sunday afternoon, was requested to go himself or send some one with the key to admit the inspector of nuisances to his shop in order that some meat there might be examined. He refused, and was convicted under 26 & 27 Vict. c. 117, s. 3, of preventing, obstructing, or impeding the inspector when duly engaged in carrying into execution the provisions of this Act. It was held that, although Sunday afternoon might, under some circumstances, be a reasonable time for examining meat, the appellant, at most, had refused to assist the inspector, and had not prevented, obstructed, or impeded him.

(b) As to how the power of entry may be exercised and enforced, see section 115, *post*. The expression "premises" is defined by section 141, *post*.

(c) This will apparently apply to a live animal. See a decision of the Recorder of Southampton in *Moody v. Leech*, 44 J. P. 459.

(d) This is an important amendment of the law. The 26 & 27 Vict. c. 117, s. 2, applied only to any "animal, carcass, meat, poultry, game, flesh, fish, fruit, vegetables, corn, bread, or flour," and did not apply to such things as cheese, butter, eggs, &c.

(e) The word "place" is used in a general sense, and is not qualified here. Two carcasses of cows unfit for food were found in a yard at the back of a butcher's house, there being a slaughter-house on one side of the yard. It was held that the yard was a "place" within the corresponding words in 26 & 27 Vict. c. 117, s. 2: *Young v. Grattridge*, L. R. 4 Q. B. 166; 38 L. J. M. C. 67; 33 J. P. 260. Under the same Act it was held that diseased meat placed upon a cart, when passing along the streets of the City of Dublin from a slaughterhouse to a place for the manufacture of preserved meats was properly seized: *Daly v. Webb*, 4 Ir. Rep. C. L. 309.

(f) This must mean when the person is charged under sub-section (2), *post*.

(g) According to the opinions of Drs. Letheby and Tidy, given in evidence in a case reported in 37 J. P. 267, an animal killed immediately before, or during, or after, parturition is unfit for human food.

(h) It was held under the corresponding sections of the Public Health Act, 1875, that meat might be taken before a justice and condemned, without any summons or notice to the person to whom it belonged, and that such person having been, subsequently to the destruction of the meat, summoned and convicted, such conviction was good: *White v. Redfern*, 5 Q. B. D. 15; 49 L. J. M. C. 19; 41 L. T. (N.S.) 524; 28 W. R. 168; 44 J. P. 87.

SECT. 47.

Note.

SECT. 47. (2) If it appears to a justice that any animal or article which has been seized or is liable to be seized under this section is diseased, or unsound, or unwholesome, or unfit for the food of man, he shall condemn the same, and order it to be destroyed or so disposed of as to prevent it from being exposed for sale or used for the food of man; (a) and the person to whom the same belongs or did belong at the time of sale or exposure for sale, or deposit for the purpose of sale or of preparation for sale, or in whose possession or on whose premises the same was found, (b) shall be liable on summary conviction to a fine not exceeding fifty pounds for every animal, or article, or if the article consists of fruit, vegetables, corn, bread or flour, for every parcel thereof so condemned, or, at the discretion of the court, without the infliction of a fine, to imprisonment for a term of not more than six months with or without hard labour. (c)

(a) The justice need not give notice to the owner. See *White v. Redfern, supra*.

In *Williams v. Narbrett Sanitary Authority*, "Times," December 7th, 1882, the court expressed an opinion that a condemnation on the day after seizure during hot weather, in the month of July, was bad. But in *Burton v. Bradley*, 51 J. P. 118, the court held that the text did not require condemnation to be on the same day as the seizure; but that it was enough if reasonable diligence was used.

Questions of difficulty may arise after the condemnation of the articles seized. It may transpire that the goods were not properly seized, as in *Vinter v. Hind, supra*, or that they were not intended for the food of man, or the like. In such a case what is the remedy of the owner? According to the judgments in *White v. Redfern, supra*, an owner who is proceeded against under the Public Health Act, 1875, may claim compensation under section 308 of that Act, but there is no compensation clause in this Act, and it seems doubtful, therefore, whether the owner has any remedy at all.

In *Reg. v. Blount*, 43 J. P. 383, the defendant was charged with having unlawfully exposed or deposited for sale or preparation for sale certain meat intended for human food. The magistrate dismissed the charge on the ground that the defendant was himself unaware of the

fact that the meat was upon his premises, as it had arrived there and had been seized in his absence. Subsequently, a summons was issued against the defendant in respect of the same seizure for having on his premises meat for the purpose of sale, &c., and the same evidence was given as that adduced on the first charge. The defendant was convicted on the second summons, but the court quashed the conviction on the ground that the defendant might have been convicted of the offence charged on the second summons when he appeared upon the first, and that the second summons was for the same matters. The court seem to have considered, therefore, that the section created only one offence. But in *White v. Redfern*, 49 L. J. M. C. at p. 22, FIELD, J., said that the section created two offences. It will be prudent, therefore, in issuing a summons to confine it to one offence, otherwise a conviction founded upon it may be bad for duplicity.

The respondent, a butcher, exposed for sale part of a cow which had died of disease, and sold the meat to a customer, who took it home for food, and some days afterwards at the request of the appellant, an inspector of nuisances, handed it over to him, and it was condemned by a justice as unfit for the food of man. It was held that the meat was not so seized and condemned as is prescribed by section 116, and the defendant could not for that reason be convicted under section 117 of the Public Health Act, 1875: *Vinter v. Hind*, 10 Q. B. D. 63; 31 W. R. 198; 48 L. T. (N.S.) 359; 47 J. P. 373. See, however, the next sub-section. In the same case, STEPHEN, J., expressed an opinion that the defendant cannot, upon a prosecution under the corresponding section of the Public Health Act, 1875, call evidence for the purpose of showing that the meat which had been condemned was not, in fact, unsound. But this dictum was expressly over-ruled in *Waye v. Thompson*, 15 Q. B. D. 342; 54 L. J. M. C. 140; 53 L. T. (N.S.) 358; 33 W. R. 733; 49 J. P. 693.

By section 116 of the Public Health Act, 1875, power is given to any medical officer of health or inspector of nuisances to inspect meat "exposed for sale, or deposited in any place for the purpose of sale, or of preparation for sale, and intended for the food of man;" and if such meat appears to be unsound, or unfit for the food of man, he may seize and carry away the same in order to have it dealt with by a justice. By section 117 the justice may condemn the meat if unsound, or unfit for the food of man, and order it to be destroyed; "and the person to whom the same belongs, or did belong at the time of exposure for sale, or in whose possession, or on whose premises the same was found," shall be liable to a penalty. It was held that a person having in his possession unsound meat intended for the food of man was liable

SECT. 47.

Note.

SECT. 47. to be convicted under section 117, notwithstanding that he did not expose the meat for sale : *Mallinson v. Carr* [1891], 1 Q. B. 48 ; 60 L. J. M. C. 34 ; 39 W. R. 270 ; 55 J. P. 270.

Note. The appellant, a farmer in the country, sent to a salesman in London meat which, to his knowledge, was unsound for the purpose of its being sold and used as human food. The salesman did not expose the meat for sale, but put it aside, and called the attention of the respondent, an inspector of nuisances, to it ; the respondent seized the meat, and obtained a justice's order for its destruction. The appellant having been convicted of being the owner of unsound meat, unlawfully deposited for the purpose of sale and intended for the food of man, it was held that, in order to convict the owner of an offence under the corresponding provision in the Nuisances Removal Act, there must be either a sale or an exposure of meat for sale, and that the conviction was, therefore, bad : *Barlow v. Terrett*, L. R. 1891, 2 Q. B. 107.

H., an inspector of nuisances for the burgh of S., was convicted of perjury on an indictment that alleged that, upon the hearing of an information against G., for exposing for sale a number of rabbits which were unfit for the food of man, contrary to the Public Health Act, 1875, it was a material question whether H. had duly inspected and examined the carcases of the rabbits, and whether they had appeared to him to be unfit for the food of man before, and at the time, when he seized the same under the provisions of the Public Health Act. The indictment then alleged that H. falsely swore (among other things) that he had examined critically every rabbit, and set out the evidence giving the details of such examination ; and further alleged that H. did not examine the rabbits in the manner sworn. It appeared, that upon two occasions subsequently to the time of seizure, when he had merely made a cursory examination, sufficient, however, to entitle him to seize the rabbits, he had examined them as he had sworn he had. It, also, appeared that, at the time of the seizure, the rabbits were in fact, unfit for the food of man :—Held, that as the indictment did not allege that the evidence was given with reference to the time of seizure, and since the evidence, if taken with reference to the other occasions upon which examinations were made was perfectly true, all the allegations might be true without H. having sworn falsely, and that, therefore, no offence was disclosed upon the indictment : *Reg. v. Hadfield*, 55 L. T. 783 ; 51 J. P. 344 ; 16 Cox C. C. 148 (C. C. R.)

The appellant was an under-bailiff on the estate of N., a large landowner, and it was his duty to receive his instructions from, and obey the orders of, the head bailiff. Two cows belonging to N. were

slaughtered, as they were affected by disease ; the appellant was not present when the cows were slaughtered, but on the same day he was told by the head bailiff to send the meat to Portsmouth, and to go there himself to meet it. The appellant went to Portsmouth the following day, and saw a butcher named B., and on the next day the head bailiff, having been told that the meat had not been sent off, directed the appellant to take the meat to P. railway station and consign it to the butcher. The transit of the meat to the P. station was superintended by the appellant who took charge of it. It was then sent by train in the appellant's own name to the butcher at Portsmouth, the appellant sending a telegram to the butcher : "Two carcasses of meat sent to you ; make best of it." The butcher replied that the meat, which was then lying at Portsmouth railway station was of no use to him. The appellant then sent a telegram to the station-master : "Ask consignee to do the best he can. If he can't dispose of it, bury it, and charge sender expenses." The meat was seized while lying at the station and condemned as unsound. Upon these facts the appellant was convicted under the 117 section of the Public Health Act, 1875, of exposing unsound meat for sale, being the person "to whom the same belonged :"—Held, quashing the conviction that there was no evidence whatever upon the facts to show that the appellant was the person "to whom the meat belonged" within the meaning of the 117th section of the Act : *Newton v. Monkton*, 58 L. T. 231 ; 52 J. P. 692 ; 16 Cox C. C. 382.

It has been held in a Scotch case that, in order to obtain a conviction against the occupier of premises for being in possession of unsound meat as or for human food, it is not essential to prove that the accused knew either of the meat being in his premises or of its unsound condition : *Dickson v. Linton*, 15 Ct. of Sess. 4th Series J. C. 76.

(c) Each separate exposure of a piece of bad meat is a separate offence in respect of which a penalty and costs can be imposed : *In re Hartley*, 31 L. J. M. C. 332 ; 26 J. P. 438.

As to the recovery of the penalty and the enforcing of the conviction, see section 117, *post*.

As the defendant is liable to be imprisoned for six months, without the option of a fine, he may demand to be tried by a jury under section 17 of the Summary Jurisdiction Act, 1879.

(3) Where it is shown that any article liable to be seized under this section, and found in the possession of any person was purchased by him from another person for the food of man, and when so purchased was in such

SECT. 17.
Note.

SECT. 47. a condition as to be liable to be seized and condemned under this section, the person who so sold the same shall be liable to the fine and imprisonment above mentioned, unless he proves that at the time he sold the said article he did not know, and had no reason to believe, that it was in such condition.

This is a new provision. It was obviously drafted to meet the case of *Vinter v. Hind, supra*. It does not quite provide for the facts in *Barlow v. Terrett, supra*. It follows from the text that when an article of food has been sold, and is at the time of sale unfit for food, the vendor may be convicted without any previous seizure and condemnation, unless he proves that he did not know, and had no reason to believe that it might have been seized and condemned.

(4) Where a person convicted of an offence under this section has been within twelve months previously convicted of an offence under this section, the court may, if it thinks fit, and finds that he knowingly and wilfully committed both such offences, order that a notice of the facts be affixed, in such form and manner, and for such period not exceeding twenty-one days, as the court may order, to any premises occupied by that person, and that the person do pay the costs of such affixing; and if any person obstructs the affixing of such notice, or removes, defaces, or conceals the notice while affixed during the said period, he shall for each offence be liable to a fine not exceeding five pounds.

This is a new and unusual provision.

As to the recovery of the fine, see section 117, *post*.

(5) If the occupier of a licensed slaughter-house is convicted of an offence under this section, the court convicting him may cancel the license for such slaughter-house.

A slaughter-house license is granted by the London County Council under section 20, *ante*, p. 43.

(6) If any person obstructs an officer in the performance of his duty under any warrant for entry into any premises granted by a justice in pursuance of this Act for the purposes of this section, (a) he shall, if the court is satisfied that he obstructed with intent to prevent the discovery of an offence against this section, or has within twelve months previously been convicted of such obstruction, (b) be liable to imprisonment for any term not exceeding one month in lieu of any fine authorised by this Act for such obstruction. (c)

(a) The warrant above referred to is apparently a warrant under section 115, *post*. The sub-section provides only for obstructing an officer who has a warrant, and is much less general than the repealed 27 & 28 Vict. c. 117, s. 2, or the corresponding provision of the Public Health Act, 1875 (section 118). Under section 116 of this Act, however, it is an offence to prevent an officer from entering premises to discover a contravention of the Act, so that the result is much the same.

As to what amounts to obstruction, see *Small v. Bickley, supra*.

(b) The offence will be complete if the defendant has been convicted within twelve months, though his intent may not have been to prevent the discovery of an offence against the section.

(c) The fine authorised by this Act is 20*l.* See section 115, sub-section (4), *post*.

(7) A justice may act in adjudicating on an offender under this section, whether he has or has not acted in ordering the animal or article to be destroyed or disposed of.

This sub-section is taken from 37 & 38 Vict. c. 89, s. 54. It may be doubted whether it is necessary, as there is nothing in sub-section (2), from which it could fairly be inferred, that the justice who convicts must have been the justice who condemned.

(8) Where a person has in his possession any article which is unsound or unwholesome or unfit for the food of man, he may, by written notice to the sanitary authority, specifying such article, and containing a suffi-

SECT. 47. cient identification of it, request its removal, and the sanitary authority shall cause it to be removed as if it were trade refuse.

This is a new clause. It will take away the ground of a common defence in prosecutions for having unsound food in one's possession. It has very often been suggested that the food had been set aside with the intention of destroying it before it was seized. The power to give notice under this sub-section will now afford a test of *bonâ fides* when this line of defence is adopted.

As to the giving of this notice, see section 128, sub-section (2), *post*.

As to the removal of trade refuse, see section 33, *ante*, p. 66.

*Provisions
as to
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Provisions
as to house
without
proper
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supply.

• *Provisions as to Water.*

48.—(1) An occupied house without a proper and sufficient supply of water shall be a nuisance liable to be dealt with summarily under this Act, and, if it is a dwelling-house, shall be deemed unfit for human habitation.

This is a new provision, and there is nothing exactly like it in the Public Health Acts. See 41 & 42 Vict. c. 25, s. 6.

The word "house" is defined by section 141, *post*.

An occupied house will include premises occupied for business only.

The summary procedure for dealing with nuisances is contained in sections 4, 5.

A dwelling-house unfit for human habitation may be ordered to be closed under section 5, sub-sections (6) and (7).

(2) A house which after the commencement of this Act is newly erected, or is pulled down to or below the ground floor and rebuilt, shall not be occupied as a dwelling-house until the sanitary authority have certified that it has a proper and sufficient supply of water, either from a water company or by some other means.

This sub-section is also new. It corresponds to section 6 of the Public Health (Water) Act, 1878 (41 & 42 Vict. c. 25).

It should be observed that the above provision applies only to the

occupation of the house as a dwelling-house. No certificate will be required for houses used as business premises or the like, though they may be liable to be dealt with under the preceding sub-section.

Note.

(3) If the sanitary authority refuse such certificate, or fail to give it within one month after written request for the same from the owner of the house, the owner of the house may apply to a petty sessional court, and that court, after hearing or giving the sanitary authority an opportunity to be heard, may, if they think the certificate ought to have been granted, make an order authorising the occupation of the house; but, unless such order is made, an owner who occupies or permits to be occupied the house as a dwelling-house without such certificate shall be liable to a fine not exceeding ten pounds, and to a fine not exceeding twenty shillings for every day during which it is so occupied until a proper and sufficient supply of water is provided; but the imposition of such fine shall be without prejudice to any proceedings for obtaining a closing order.

For the meaning of the expression "petty sessional court," see the note to section 5, sub-section (8), *ante*, p. 21.

The court will probably give the sanitary authority an opportunity of being heard by means of a notice or summons.

As to the recovery of the fine, see section 117, *post*. A closing order is made under section 5, sub-sections (6), (7), *ante*, p. 21.

49.—(1) Where a water company may lawfully cut off the water supply to any inhabited dwelling-house and cease to supply such dwelling-house with water for non-payment of water rate or other cause, (a) the company shall in every case, within twenty-four hours after exercising the said right, give notice thereof in writing (b) to the sanitary authority of the district (c) in which the house is situated.

Notice to
sanitary
authority
of water
supply
being cut
off.

(a) A water company may cut off the water supply in the following cases:—

SECT. 49. (1) If the consumer, when required by the company, neglects to provide a proper cistern with a ball and stop-cock in the pipe bringing the water from the works of the company to such cistern, or to keep the same in good repair: 10 & 11 Vict. c. 17, s. 54.

Note.

(2) If the consumer neglects to pay the water rate on any of the quarterly days of payment: 10 & 11 Vict. c. 17, s. 74.

(3) If the consumer wrongfully does, or causes, or permits to be done, anything in contravention of any of the provisions of the special Act, or wrongfully fails to do anything which, under any of those provisions, ought to be done for the prevention of the waste, misuse, undue consumption, or contamination of the water: 26 & 27 Vict. c. 93, s. 16.

(4) If the consumer shall wilfully do or cause to be done any act, matter, or thing in contravention of the provisions of the Metropolis Water Acts, or of the special Act relating to the company, or of any Act incorporated therewith, or shall wilfully omit or neglect to do any matter or thing which under such provisions ought to be done for the prevention of the waste, misuse, or undue consumption, or the contamination of the water of the company: 15 & 16 Vict. c. 84, s. 25; 34 & 35 Vict. c. 113, s. 2.

(b) As to the giving of this notice, see section 128, sub-section (2), *post*.

(c) As to the districts of the several sanitary authorities in London, see section 99, sub-section (2), *post*.

(2) Any company which neglects to comply with the foregoing provision shall be liable to a fine not exceeding ten pounds, and it shall be the duty of the sanitary authority to take proceedings against any company in default.

As to the recovery of the fine, see section 117, *post*.

If the sanitary authority make default in prosecuting the county council may do so under section 100, *post*, or complaint may be made to the Local Government Board under section 101, *post*.

(3) This section shall apply to every water company which is a trading company supplying water for profit.

Cleansing of cisterns. 50. Every sanitary authority shall make bye-laws for securing the cleanliness and freedom from pollution of tanks, cisterns, and other receptacles used for storing

of water used or likely to be used by man for drinking or SECT. 50.
domestic purposes, or for manufacturing drink for the
use of man.

This is a new provision.

As to the making of bye-laws, see section 114, *post*.

The word "water-butt" is superfluous, for by section 141, *post*, the expression "eistern" includes a water-butt.

The expression "domestic purposes" is not defined. There have, however, been some decisions upon the expression as used in 10 & 11 Vict. c. 17, s. 53. The supply of water for the use of a horse and the washing of a carriage in a stable attached to a dwelling-house, and used for the sole accommodation of the occupier, was held to be for domestic use in *Bushby v. Chesterfield Waterworks Company*, E. B. & E. 176; 22 Jur. 757; 27 L. J. M. C. 174; 22 J. P. 689. The supply of water to a workhouse is a supply for domestic purposes: *Liskeard Union v. Liskeard Waterworks Company*, 7 Q. B. D. 505; 45 J. P. 780. A supply for domestic purposes includes a supply for a fixed bath: *Weaver v. Cardiff (Mayor, &c., of)*, 48 L. T. (N.S.) 906; 47 J. P. 599; and a supply for watering a pleasure garden attached to and occupied with the house: *Bristol Waterworks Company v. Uren*, 15 Q. B. D. 637; 54 L. J. M. C. 97; 52 L. T. (N.S.) 655; 49 J. P. 564.

51.—(1) All existing public cisterns, reservoirs, wells, fountains, pumps, and works used for the gratuitous supply of water to the inhabitants of the district of any sanitary authority, and not vested in any person or authority other than the sanitary authority, shall vest in and be under the control of the sanitary authority; and that authority may maintain the same and plentifully supply them with pure and wholesome water, or may substitute, maintain, and plentifully supply with pure and wholesome water other such works equally convenient, and may maintain and supply with water as aforesaid other public cisterns, reservoirs, wells, fountains, pumps, and other such works within their district.

This section is taken from 23 & 24 Vict. c. 77, s. 7; 18 & 19 Vict. c. 120, s. 116; and 25 & 26 Vict. c. 102, s. 70. It corresponds to sec-

SECT. 51. tion 64 of the Public Health Act, 1875, but differs from that section in some particulars.

Note.

The word "cistern" is defined by section 141, *post.*

Where a well had been provided at the expense of a private individual upon land enclosed and allotted to him to be kept as a recreation ground for the parish, and the well had been formally declared to be for the use of the public, it was held to be a well which a sanitary authority might incur expense in repairing and maintaining: *Witney v. Wycombe*, 40 J. P. 149.

A well situated on private ground, the water of which had been used for domestic purposes gratuitously by the inhabitants in the vicinity for the prescriptive period, was held to be a public well within the meaning of the corresponding provisions of the Public Health (Scotland) Act, 1867 (30 & 31 Vict. c. 101), s. 89, sub-sec. (4), and it was also held that the local authority might enter upon the land and do all acts to the well for continuing and maintaining it, which the inhabitants might have done before, and that although there might be a company with a vested right to supply the inhabitants with water: *Smith v. Archibald*, 5 App. Cas. 489. The facts in that case were shortly as follows:—Situated in one corner of a field in the parish of D. was a well. From the well to the entrance of the field there was a footpath, and from that entrance to the public road going through the village of D. there was a cart road. The inhabitants of D. had for the prescriptive period used the water of the well for domestic purposes, and had, among other acts done to the well, enclosed it with stones at their own expense. The local authority, acting under the section already mentioned, caused the well to be covered in with an iron plate, and placed therein a hand pump with the avowed object of keeping the well free from pollution. The proprietor of the field, alleging the well to be his private property, instituted proceedings to compel the authority to remove the cover and pump. But it was held by the House of Lords, affirming the decision of the Court of Session, that the well was a public well within the meaning of the statute, and that the local authority, as representing the inhabitants, had not done anything in excess of their powers.

In the *Leadgate Local Board v. Bland*, 45 J. P. 526, which was a case tried at Durham Assizes, KAY, J., held that a natural pond was a reservoir within the section, having been used by the public for a number of years for the purpose of watering horses.

"What the Act says is, notwithstanding that there may be a company with a vested right to supply the inhabitants, the local authority may, where there is a public well, and where there is a public right to

be gratuitously supplied (from it), continue and maintain that well." SECT. 51.
Per Lord BLACKBURN, in *Smith v. Archibald, supra.*

In *Edwards v. Joliffe*, W. N. 1877, p. 120, an injunction was granted at the suit of the plaintiff, a landowner, through whose estate a lane passed, to restrain the defendants, the servants of the surveyor of highways, from digging holes in the roadway of the lane under these circumstances:—On a piece of land not actually part of the lane, but entirely open to it, were five public wells which suddenly failed. The highway board, with the sanction of the rural sanitary authority, in whom the wells were vested under the above section, ordered the defendant to dig the holes either to recover the water or to discover the cause of its having ceased to flow. The plaintiff's land on either side of the lane was on a slope, and on the southern side, where the land was below the level of the wells, the plaintiff had been drifting for water, and the defendant said he had no doubt the supply of water to the wells had been tapped by the plaintiff's operations:—Held, that the above section did not authorise the local authority to enter another man's land and help themselves to water. There was no suggestion that the plaintiff had done anything more than he was clearly entitled to do, or that the defendants were not entering his land.

Note.

A local board of health Act empowered the board to supply the town with water at certain rates for domestic purposes, and for other than domestic purposes for such remuneration and upon such terms and conditions as should be agreed upon between them and the persons desirous of having such supply. An inhabitant of the town having presented to the town an ornamental fountain with a trough or basin, which was set up in one of the public streets, the board supplied it with water on market days for the use of the cattle in the market, and for horses if yoked, passing to and fro. The respondent, who kept horses, with a view to evade the payment of the rate for the supply of water to his stable, took his horses to the fountain to drink. Upon an information laid against him under the Waterworks Clauses Act, 1847, s. 59, the magistrates being of opinion that the board had no right to erect a fountain on the public highway otherwise than for the gratuitous use of the public under the corresponding section of the Public Health Act, 1848, declined to convict. On appeal it was held that they were wrong, for notwithstanding the fountain might be a public nuisance, yet the water was the private property of the board, and the respondent had no right to take it against their will: *Hildreth v. Adamson*, 8 C. B. (N.S.) 587; 30 L. J. M. C. 204; 2 L. T. (N.S.) 359; 25 J. P. 645. The effect of this case is that the board may, if they think fit, limit the purposes

SECT. 51. for which the gratuitous supply is provided. The court refrained from expressing any opinion on the point whether a fountain for gratuitous supply might, by virtue of this section, be erected on a public highway. See, however, the next sub-section.

Note. (2) The sanitary authority may provide and maintain public wells, pumps, and drinking fountains in such convenient and suitable situations as they may deem proper.

This sub-section is taken from 25 & 26 Vict. c. 102, s. 70. It does not in terms enable the sanitary authority to erect a public fountain in a highway, but this may, perhaps, be inferred.

(3) If any person wilfully damages any of the said wells, pumps, or fountains, or any part thereof, he shall, in addition to any punishment to which he is liable, pay to the sanitary authority the expenses of repairing or reinstating such well, fountain, pump, or part thereof.

The offender will be liable to a fine under section 53 or section 116, *post*, and the expenses may be recovered at the same time under section 117, *post*.

Penalty for causing water to be corrupted by gas 52.—(1) If any person *(a)* engaged in the manufacture of gas—

(a.) Causes or suffers *(b)* to be brought or to flow into any source of water supply, *(c)* or into any drain or pipe communicating therewith, any washing or other substance produced in making or supplying gas; or,

(b.) Wilfully or negligently does any act connected with the making or supplying of gas whereby the water in any source of water supply *(c)* is fouled,

he shall for every such offence be liable to a fine of two hundred pounds, and, after the expiration of twenty-four

hours' notice from the sanitary authority or the person to whom the water belongs in that behalf, to a further fine of twenty pounds for every day during which the offence continues. (d)

(a) There is no definition in this Act of the expression "person." The words of 18 & 19 Vict. c. 121, s. 23, were "any person or company."

(b) A private Act of Parliament which incorporated a gas company, and empowered them to make the necessary works, contained an enactment (section 160), that if the company should at any time "cause or suffer to be conveyed or to flow" into any stream, &c., or place for water within the limits of the Act, any washing produced in making gas, or do any act to the water contained in any such stream, &c., or place for water, whereby the water therein should be fouled or corrupted, then the company should forfeit for every such offence 200*l.* Section 161 imposed an additional penalty of 20*l.* per day for the continuance of such pollution more than twenty-four hours after notice. Section 165 made the company liable to a penalty if any water was polluted by the escape of gas. The site for the gas tank was selected by an experienced engineer, and the company built it in a proper manner, and with all ordinary care and prudence. They knew that mines had been worked in the neighbourhood, but did not know that any mines had been worked under their own lands. After some years the gas tank cracked at the bottom, and the washings produced in the making of gas escaped and percolated underground through the earth and polluted the water in the plaintiff's well. The company then found on enquiry that mines had been worked by strangers to them under part of their land and close up to the tank. The crack in the tank was caused by the subsidence of the soil, owing, in all probability, to the mining operations:—Held, by the Exchequer Chamber, that the company were liable, under section 160, to the penalty of 200*l.* for polluting the plaintiff's water by the gas washing: *Hipkins v. The Birmingham and Staffordshire Gas Company*, 30 L. J. Ex. 60; 7 Jur. (N.S.) 213; 6 H. & N. 250; 24 J. P. 438.

(c) The expression "source of water supply," is defined by section 141, *post*. When noxious matter percolated through the soil from gas-works so as to foul a well, such percolation was held to render a company liable under the similar provisions of 3 & 4 Will. 4, c. 90. A well which, on account of its having become contaminated, had been disused by the owner for several years, and had been covered over, was held not to cease to be a well within the meaning of the Act. Non-user, and the closing of his own well in consequence of its being polluted, even coupled

SECT. 52. with the acceptanee by the plaintiff of the use of wells substituted by the defendants, was held not to be such an abandonment of the former as to alter its character, and make it no longer a well, nor could any license to pollute it be inferred from such a state of facts. *Quære*, per KEATING, J., whether a man could by deed give an irrevocable license to pollute a well. A presercription to foul a well will be defeated by variation and excess in the degree of fouling during the prescribed period: *Millington v. Griffiths and Others*, 30 L. T. (N.S.) 65. In the above cases it is assumed that a well is a "place for water."

Apart from statutory provision it appears that a pollution of a river by gas washings is a nuisance at common law for which an indictment will lie. See *R. v. Medley and Others*, 6 C. & P. 292.

It is to be observed that the Public Health Act, 1875, s. 68, the Gasworks Clauses Act, 1847 (10 & 11 Vict. e. 15, s. 21), and the Water-works Clauses Act, 1847 (10 & 11 Vict. c. 17, s. 62), contain provisions almost identical with this section.

The same provisions in the Nuisances Removal Act (18 & 19 Vict. c. 121, ss. 23—5), were held to supersede a clause in a local Act containing similar penalties: *Parry v. Croydon Gas and Coke Company*, 11 C. B. (N.S.) 579; 15 C. B. (N.S.) 568; 28 J. P. 86.

(d) As to the recovery of the penalty, see the next subsection.

(2) Every such fine may be recovered, with full costs of action, in the High Court, in the case of water belonging to or under the control of the sanitary authority by that authority, and in any other case by the person into whose water such washing or other substance is brought or flows, or whose water is fouled by any such act as aforesaid, or in default of proceedings by such person after notice to him from the sanitary authority of their intention to proceed for such fine, by the sanitary authority; but such fine shall not be recoverable unless it is sued for during the continuance of the offence, or within six months after it has ceased.

The only water which appears to belong to, or to be under the control of, the sanitary authority, is that in public wells or fountains. See section 51, *ante*, p. 101.

As to the authentication and service of the notice, see sections 127, 128, *post*.

53. If any person does any act whereby any fountain or pump is wilfully or maliciously damaged,(a) or is guilty of any act or neglect whereby the water of any well, fountain, or pump used or likely to be used by man for drinking or domestic purposes,(b) or for manufacturing drink for the use of man, is polluted or souled, he shall be liable to a fine not exceeding five pounds for each offence, and a further fine not exceeding twenty shillings for every day during which the offence continues after notice is served on him by the sanitary authority in relation thereto,(c) but this section shall not extend to offences against the last preceding section by persons engaged in the manufacture of gas.

(a) A person who damages a fountain, or pump, is liable to pay the cost of making good the damage, as well as to a fine, under this section. See section 51, sub-section (3), *ante*, p. 104.

(b) See the note to section 50, *ante*, p. 101.

(c) As to the recovery of this fine, see section 117, *post*.

54.—(1) On the representation of any person to a sanitary authority that within their district the water in any well, tank, or cistern, public or private, or supplied from any public pump, is used or likely to be used by man for drinking or domestic purposes, or for manufacturing drink for the use of man,(a) and is so polluted, or is likely to be so polluted,(b) as to be injurious or dangerous(c) to health, a petty sessional court,(d) on complaint by such authority and after hearing the person who is the owner or occupier of the premises to which the well, tank, or cistern belongs, if it be private, or in the case of a public well, tank, cistern, or pump, is alleged in the complaint to be interested in the same,(e) or after giving him an opportunity of being heard, may by summary order(f) direct the well, tank, cistern, or pump to be permanently or temporarily closed, or make

Penalty
for fouling
water.

close
polluted
wells, &c.

SECT. 54. such other order as appears to the court requisite to prevent injury or danger to the health of persons drinking the water.

This section is taken from 37 & 38 Vict. c. 89, s. 50. It corresponds to section 70 of the Public Health Act, 1875.

(a) The words, "or for manufacturing drink for the use of man," did not appear in 37 & 38 Vict. c. 89, s. 50, but they do occur in section 70 of the Public Health Act, 1875.

(b) The words, "or is likely to be polluted," are new.

(c) The words "or dangerous" are new. The necessity for introducing them is not obvious.

(d) See the note to section 5, sub-sect. (8), *ante*, p. 21.

(e) The meaning of the word "interested" is not clear. In the case of a public well, from which any person may take water, every person has a kind of interest. Possibly the interest referred to may be restricted to persons who habitually use the water.

(f) A summary order is an order made by a court of summary jurisdiction in manner provided by the Summary Jurisdiction Acts (42 & 43 Vict. c. 49, s. 51, sub-sect. (3)).

(2) The court may, if they see fit, cause the water complained of to be analysed at the cost of the sanitary authority complaining.

This clause applies only when the complaint is preferred by the sanitary authority.

It should be observed that a public analyst is not bound, as part of his official duty, to analyse water.

(3) If the person on whom the order is made fails to comply therewith, he shall be liable to a fine not exceeding twenty pounds, and a petty sessional court on complaint by the sanitary authority may authorise that authority to execute the order, and any expenses incurred by them in so doing may be recovered in a summary manner from the said person.

As to the meaning of the expression "petty sessional court," see the note to section 5, sub-section (8), *ante*, p. 21.

As to the recovery of the fine and expenses, see section 117, *post*.

SECT. 55.

Infectious Diseases.—Notification.(a)

55.—(1) Where an inmate of any house(*b*) within the district of a sanitary authority is suffering from an infectious disease to which this section applies, (*c*) the following provisions shall have effect, that is to say:—

*Infectious
Diseases.
—Notifi-
cation.
Notifica-
tion of in-
fectious
disease.*

(a.) The head of the family to which such inmate (in this section referred to as the patient) belongs, and in his default the nearest relatives of the patient present in the house or being in attendance on the patient, and in default of such relatives, every person in charge of or in attendance on the patient, and in default of any such person the master of the house(*d*) shall, as soon as he becomes aware that the patient is suffering from an infectious disease to which this section applies, send notice thereof to the medical officer of health of the district : (*e*)

(b.) Every medical practitioner attending on or called in to visit the patient shall forthwith, on becoming aware that the patient is suffering from an infectious disease to which this section applies, send to the medical officer of health of the district a certificate(*f*) stating the full name and the age and sex of the patient, the full postal address of the house, and the infectious disease from which in the opinion of such medical practitioner the patient is suffering, and stating also whether the case occurs in the private practice of such practitioner or in his practice as a medical officer of any public body or institution, and where the certificate refers to the inmate of a hospital it shall specify the place from which and the date at which the

SECT. 55.

inmate was brought to the hospital, and shall be sent to the medical officer of health of the district in which the said place is situate : (g)

Provided that, in the case of a hospital of the Metropolitan Asylum Managers, a notice or certificate need not be sent respecting any inmate with respect to whom a copy of the certificate has been previously forwarded by the medical officer of health of the district to the said managers. (h) •

(a) This section and the two following are merely a reproduction of 52 & 53 Vict. c. 72 (The Infectious Diseases Notification Act, 1889), which is now repealed as far as the metropolis is concerned.

(b) The expression "house" as defined by section 141, *post*, and see sub-section (7), *infra*, which extends the application of the section to buildings, vessel, tent, &c., used for human habitation.

(c) These infectious diseases are enumerated in sub-section (8), *infra*.

(d) The persons upon whom the obligation imposed by the section is laid, are:—(1) the head of the family; (2) the nearest relatives in the building or in attendance on the patient; (3) the person in charge of the patient; and (4) the master of the house, as defined by section 141, *post*. A notice by one of these persons avails for all enumerated later in the foregoing list, but apparently not for any enumerated earlier. (See sub-section (2), *infra*.) Thus, a notice by the head of the family renders it unnecessary for the relatives to give a notice. But a notice given by the relatives does not free the head of the family from the consequences of himself failing to give the notice.

(e) As to the manner in which notices may be sent, see sub-section (6), *infra*. And as to the sending of the notice when there are two or more medical officers of health, see sub-section (5), *infra*.

(f) As to the form of the certificate, see sub-section (3), *infra*.

(g) The certificate above described is much more full than that required under 52 & 53 Vict. c. 72. Thus it is new to require the full postal address, whether the case occurs in private practice, &c., and the particulars as to patients in a hospital.

The expression "hospital" is defined by section 141, *post*.

(h) This proviso is new. The managers here referred to are the governing body of the Metropolitan Asylum district, formed by order

of the Poor Law Board, under 30 Viet. c. 6. See "The Poor Law SECT. 55. General Orders," by Maemorran and Lushington, p. 855.

As to the copy of the certificate referred to in the proviso, see sub-section (4), *infra*.

Note.

(2) Every person required by this section to send a notice or certificate, who fails forthwith to send the same, shall be liable to a fine not exceeding forty shillings: Provided that if a person is not required to send notice in the first instance, but only in default of some other person, he shall not be liable to any fine if he satisfies the court that he had reasonable cause to suppose that the notice had been duly sent.

The fine will be recoverable summarily under section 117, *post*.

As to the person liable to send a notice in the first instance, or in default of some other person, see the preceding sub-section and note (d) thereto.

(3) The Local Government Board may prescribe forms for the purpose of certificates to be sent in pursuance of this section, and if such forms are so prescribed, they shall be used in all cases to which they apply. The sanitary authority shall gratuitously supply forms of certificate to any medical practitioner residing or practising in their district who applies for the same, and shall pay to every medical practitioner for each certificate duly sent by him in accordance with this section a fee of two shillings and sixpence if the case occurs in his private practice, and of one shilling if the case occurs in his practice as medical officer of any public body or institution.

The certificates above referred to are those which must be sent by medical practitioners. As these will differ considerably from the form hitherto in use under the Act of 1889, new forms will presumably be prescribed by the Local Government Board. See sub-section (1), note (g).

The expression "public body or institution" will, no doubt, include

SECT. 55. public hospitals and infirmaries, workhouses, and the like. But it is submitted that it will not include private hospitals to which patients are admitted for payment, nor medical clubs or provident dispensaries.

Note.

(4) Where a medical officer of health receives a certificate under this section relating to a patient within the Metropolitan Asylum district, he shall, within twelve hours after such receipt, send a copy thereof to the Metropolitan Asylum Managers, and to the head teacher of the school attended by the patient (if a child), or by any child who is an inmate of the same house as the patient. The Metropolitan Asylum Managers shall repay to the sanitary authority the fees paid by that authority in respect of the certificates whereof copies have been so sent to the managers. The managers shall send weekly to the county council and to every medical officer of health, such return of the infectious diseases of which they receive certificates in pursuance of this section as the county council require.

The duty of forwarding these copies will devolve on the medical officer of health, and it will apparently be his duty to make enquiry in every case whether there is in the house where the patient is any child attending school, and at what school such child attends. This is an important duty and it will impose a considerable burden upon the medical officer, especially as he must act within twelve hours after receipt of the certificate. The provision as to sending a copy to the teacher of the school is new.

The county council is the London County Council. See section 141, *post.*

The returns are to be sent to every medical officer of health, *i.e.*, every medical officer of health in the metropolis. This is a new provision and its object is not apparent.

(5) Where in any district of a sanitary authority there are two or more medical officers of health of that authority, a certificate under this section shall be sent to such

one of those officers as has charge of the area in which **SECT. 55.**
is the patient referred to in the certificate, or to such
other of those officers as the sanitary authority may
direct.

This sub-section applies only to the certificate of the medical practitioner. There is no similar provision as to notices under sub-section (1), (a). It may be inferred that a notice may be sent to any one of the medical officers.

(6) A notice or certificate to be sent to a medical officer in pursuance of this section may be sent to such officer at his office or residence.

This sub-section does not provide for the posting of notices. Section 8 of the Act of 1889 enabled a notice to be sent by post, but this provision has not been re-enacted. It may be doubted, therefore, whether the mere posting of a notice or certificate is sufficient compliance under the Act if the letter does not reach the medical officer.

(7) This section shall apply to every building, vessel, tent, van, shed, or similar structure used for human habitation, in like manner as nearly as may be as if it were a house; but nothing in this section shall extend to any house, building, vessel, tent, van, shed, or similar structure belonging to Her Majesty the Queen, or to any inmate thereof, nor to any vessel belonging to any foreign government.

This sub-section re-enacts sections 13 and 15 of the Act of 1889.

(8) In this section the expression "infectious disease to which this section applies" means any of the following diseases, namely, small-pox, cholera, diphtheria, membranous croup, erysipelas, the disease known as scarlatina or scarlet fever, and the fevers known by any of the following names, typhus, typhoid, enteric, relapsing, continued, or puerperal, and includes as respects any

SECT. 55. particular district any infectious disease to which this section has been applied by the sanitary authority of the district in manner provided by this Act.

As to the application of this section to other infectious diseases, see the next section.

The above list of infectious diseases to which the Act applies is the same as that contained in section 6 of the Act of 1889.

Power of sanitary authority to add to number of infectious diseases of which notification is required.

56.—(1) The sanitary authority of any district may, by resolution passed at a meeting of that authority of which such notice has been given as in this section mentioned, (a) order that the foregoing section with respect to the notification of infectious disease shall apply in their district to any infectious disease other than a disease specifically mentioned in that section; (b) any such order may be permanent or temporary, and, if temporary, the period during which it is to continue in force shall be specified therein, and any such order may be revoked or varied by the sanitary authority which made the same.

(a) See the next sub-section; and see also sub-section (5) as to cases of emergency.

(b) Thus the Act has in some districts been extended to measles.

(2) Fourteen clear days (a) at least before the meeting at which such resolution is proposed special notice of the meeting, and of the intention to propose the making of such order, shall be given to every member of the sanitary authority, and the notice shall be deemed to have been duly given to a member if it is given in the mode in which notices to attend meetings of the sanitary authority are usually given. (b)

(a) This means exclusive of the day on which the notice is given and the day of the meeting. See *Zouch v. Empsey*, 4 B. & Ald. 522; *Reg. v. Salop JJ.*, 8 A. & E. 173.

(b) See as to meetings of vestries and district boards: 18 & 19 Vict. c. 120, ss. 39, 40; 19 & 20 Vict. c. 112, s. 9; 25 & 26 Vict. c. 102, s. 37.

(3) An order under this section and the revocation and **SECT. 56.**
variation of any such order shall not be of any validity
until it has been approved by the Local Government
Board, and when it is so approved, the sanitary authority
shall give public notice thereof by advertisement in a
local newspaper and by handbills, and otherwise in such
manner as the sanitary authority think sufficient for
giving information to all persons interested ; they shall
also send a copy thereof to each legally qualified medical
practitioner whom, after due inquiry, they ascertain to be
residing or practising in their district.

The local authority have a duty cast upon them by this sub-section
to inquire and ascertain the names of the medical practitioners who
practice as well as of those who reside in the district.

This sub-section will not apply when an order has been made in case
of emergency, as to which see sub-section (5), *post.*

(4) The said order shall come into operation at such
date not earlier than one week after the publication of
the first advertisement of the approved order as the
sanitary authority may fix, and upon the order coming
into operation, and during the continuance thereof, an
infectious disease mentioned in the order shall, within
the district of the authority, be an infectious disease to
which the foregoing section with respect to the notifica-
tion of infectious disease applies.

After the order comes into operation the disease or diseases to which
it relates will be diseases which must be notified and certified in manner
provided by the preceding section.

(5) In the case of emergency three clear days (a) notice
of the meeting and of the intention to propose the making
of the order shall be sufficient, and the resolution shall
declare the cause of the emergency and shall be for a
temporary order, and a copy thereof shall be forthwith
sent to the Local Government Board and advertised, (b)

SECT. 56 and the order shall come into operation at the expiration of one week from the date of the advertisement; but unless approved by the Local Government Board shall cease to be in force at the expiration of one month after it is passed, or any earlier date fixed by the Local Government Board; if it is approved by the Local Government Board that approval shall be conclusive evidence that the case was one of emergency.

(a) As to the meaning of "clear days," see sub-section (2), note (a), *supra*.

(b) The approval of the Local Government Board is not required, but if such approval is not given, the order will cease to be in force after a month or such earlier date as the Board may fix.

The order is to be advertised; it is not provided that notice must be given as in sub-section (3).

(6) The county council shall, as respects London, have the same power of extending the foregoing section by order to any infectious disease, and the same power of revoking and varying the order, as a sanitary authority have under this section as respects their district; and the foregoing section when so extended by the county council shall be construed as if it had been applied under this section as respects every district in London by the sanitary authority thereof.

"Loudon" means the administrative county of Loudon. See section 141, *post*; see also sections 99, 132.

Non-disqualification of medical officer by receipt of fees.

57.—(1) A payment made to any medical practitioner in pursuance of the provisions of this Act with respect to the notification of infectious disease shall not disqualify that practitioner for serving as member of the county council, or of a sanitary authority, or as guardian of a poor law union, or in any other public office.

This provision is taken from 52 & 53 Vict. e. 72, s. 11. But for it a medical practitioner, who was a member of one of the authorities above

mentioned, might have been brought within the provisions of the enactments which forbid a member of an authority to accept or hold any office or place of profit under such authority, or to be concerned in any contract with such authority. See, for example, the Public Health Act, 1875, Sched. 2, r. 64; the Municipal Corporations Act, 1882, s. 12; the Metropolis Management Act, 1855, s. 64; and the 5 & 6 Vict. c. 57, s. 14, relating to poor law guardians.

SECT. 57.

Note.

(2) Where a medical practitioner attending on a patient is himself the medical officer of health of the district, he shall be entitled to the same fee as if he were not such medical officer.

The medical officer of health must apparently make out certificates in his own cases, and transmit copies as required by section 55 (4), *ante*.

Infectious Diseases.—Prevention.

58. The following provisions of this Act relating to dangerous infectious diseases shall apply to the infectious diseases specifically mentioned in the foregoing enactment of this Act relating to the notification of infectious disease, and all or any of such provisions may be applied by order to any other infectious disease in the same manner as that enactment may be applied to such disease, subject to the same power of revoking and varying the order, and every such infectious disease is in this Act referred to as a dangerous infectious disease.

Infectious Diseases.—Prevention.

Application of special provisions to certain infectious diseases.

This part of the Act is taken from 53 & 54 Vict. c. 34, which is now repealed so far as it relates to London.

“Dangerous infectious diseases” will include all the infectious diseases mentioned in section 55, sub-section (8), and any other infectious disease to which the sanitary authority may order this part of the Act to be applied. Such an order must be made in manner provided by section 56, *ante*.

Provision
of means
for disin-
fecting of
bedding,
&c.

SECT. 59. 59.—(1) Every sanitary authority shall provide, either within or without their district, proper premises with all necessary apparatus and attendance for the destruction and for the disinfection, and carriages or vessels for the removal, of articles (whether bedding, clothing, or other) which have become infected by any dangerous infectious disease, and may provide the same for the destruction, disinfection, and removal of such articles when infected by any other disease; and shall cause any such articles brought for destruction or disinfection, whether alleged to be infected by any dangerous infectious disease or by any other disease, to be destroyed or to be disinfected and returned, and may remove, and may destroy, or disinfect and return, such articles free of charge.

Under 29 & 30 Vict. e. 90, s. 23, a sanitary authority *might* provide a proper place, with all necessary apparatus and attendance, for the disinfection of woollen articles, clothing, or bedding. They must now provide proper premises and apparatus and carriages or vessels for removing the infected articles.

For the meaning of the expression "dangerous infectious disease," see section 58.

A sanitary authority may borrow money for the purposes of this section. See section 105, *post*.

(2) Any sanitary authorities may execute their duty under this section by combining for the purposes thereof, or by contracting for the use by one of the contracting authorities of any premises provided for the purpose of this section by another of such contracting authorities, and may so combine or contract upon such terms as may be agreed upon.

Two sanitary authorities may jointly provide the necessary premises and apparatus, or one may provide the premises, &c., and agree with another for their use by the latter upon such terms as they may arrange between themselves.

60.—(1) Where the medical officer of health of any SANCT. 60.
 sanitary authority, or any other legally qualified medical
 practitioner, (a) certifies that the cleansing and disinfect-
 ing of any house, (b) or part thereof, and of any articles
 therein likely to retain infection, or the destruction of &c.
 such articles, would tend to prevent or check any
 dangerous infectious disease, (c) the sanitary authority
 shall serve notice (d) on the master, (e) or where the house
 or part is unoccupied on the owner, of such house or
 part that the same and any such articles therein will be
 cleansed and disinfected or (as regards the articles)
 destroyed, by the sanitary authority, unless he informs
 the sanitary authority within twenty-four hours from the
 receipt of the notice that he will cleanse and disinfect
 the house or part and any such articles or destroy such
 articles to the satisfaction of the medical officer of health,
 or of any other legally qualified medical practitioner, (f)
 within a time fixed in the notice.

This section is taken, with some amendments, from 53 & 54 Viet. c. 34, s. 5.

(a) A legally qualified medical practitioner is one who is registered under the Medical Acts (21 & 22 Viet. c. 90, and 49 & 50 Viet. c. 48).

(b) The expression "house" is defined by section 141, *post*. It does not include tents, vans, sheds, &c., as to which see section 99, *post*.

(c) As to what is a dangerous infectious disease, see section 58, *ante*.

(d) As to the authentication and service of this notice, see sections 127, 128, *post*. The notice may be served by order of a committee under section 99, sub-section (4), *post*.

(e) The expressions "master" and "owner" are defined by section 141, *post*. It is only when the house is unoccupied that the notice may be served on the owner. In this respect the above sub-section differs from 53 & 54 Viet. c. 34, s. 5.

(f) This alternative is not provided in 53 & 54 Viet. c. 34, s. 5. The person upon whom the notice is served may select the medical practitioner to whose satisfaction the disinfection is to be done.

SECT. 60.

(2) If either—

- (a.) Within twenty-four hours from the receipt of the notice, the person on whom the notice is served does not inform the sanitary authority as aforesaid, or
- (b.) Having so informed the sanitary authority he fails to have the house or part thereof and any such articles disinfected or such articles destroyed as aforesaid within the time fixed in the notice, or
- (c.) The master or owner without such notice gives his consent,

the house or part and articles shall be cleansed and disinfected, or such articles destroyed by the officers and at the cost of the sanitary authority under the superintendence of the medical officer of health.

As to the power of the officers to enter premises for the purposes of the above provision, see the next sub-section.

Under 53 & 54 Vict. c. 34, s. 5, the expenses of the cleansing, &c., are payable by the owner or occupier in default. Under this Act the expenses are payable by the sanitary authority in every case.

(3) For the purpose of carrying into effect this section the sanitary authority may enter by day on any premises.

“By day” signifies between 6 A.M. and 9 P.M. See section 141, *post*, which also defines the expression “premises.” The provisions of this Act relating to the right of entry upon premises are contained in section 115, *post*.

(4) The sanitary authority shall provide, free of charge, temporary shelter or house accommodation with any necessary attendants for the members of any family in which any dangerous infectious disease has appeared, who have been compelled to leave their dwellings, for the purpose of enabling such dwellings to be disinfected by the sanitary authority.

This sub-section is taken from 53 & 54 Vict. c. 34, s. 15.

(5) When the sanitary authority have disinfected any SECT. 60. house, part of a house, or article, under the provisions of this section, they shall compensate the master or owner of such house, or part of a house, or the owner of such article, for any unnecessary damage thereby caused to such house, part of a house, or article; and when the authority destroy any article under this section they shall compensate the owner thereof, and the amount of any such compensation shall be recoverable in a summary manner.

The corresponding provision in 53 & 54 Vict. c. 34, s. 6, did not extend to a house or part of a house. It should be observed that the sanitary authority are only liable to make good unnecessary damage, *i.e.*, damage which might have been avoided with reasonable care. There is no liability in respect of unavoidable damage, though that may be substantial.

The expenses will be recoverable in a court of summary jurisdiction under section 117, *post*. The expression "in a summary manner" means in manner provided by the Summary Jurisdiction Acts. See 42 & 43 Vict. c. 49, s. 51.

61.—(1) Any sanitary authority may serve a notice ^(a) Disinfection of bedding, &c. on the owner of any bedding, clothing, or other articles which have been exposed to the infection of any dangerous infectious disease requiring the delivery thereof to an officer of the sanitary authority for removal for the purpose of destruction or disinfection; and if any person fails to comply with such notice he shall, on the information of the sanitary authority, be liable to a fine not exceeding ten pounds.

(a) As to the authentication and service of this notice, see sections 127, 128, *post*.

It should be observed that the notice must be given by the sanitary authority, or by a committee under section 99, sub-section (4), *post*. It cannot be given by the medical officer, as provided in 53 & 54 Vict. c. 34, s. 6, nor can it be given by any other officer except by direction of the sanitary authority or such committee. See *St. Leonard, Shoreditch (Vestry of), v. Holmes*, 50 J. P. 132.

SECT. 61. As to what is a dangerous infectious disease, see section 58, *ante*.
 As to the recovery of the fine, see section 117, *post*.

Note.

(2) The bedding, clothing, and articles if so disinfected by the sanitary authority shall be brought back and delivered to the owner free of charge, and if any of them suffer any unnecessary damage the authority shall compensate the owner for the same, and the authority shall also compensate the owner for any articles destroyed; and the amount of compensation shall be recoverable in a summary manner.

As to the meaning of the words "unnecessary damage," see the notes to the preceding section.

As to the meaning of the expression "petty sessional court," see the note to section 5 (8), *ante*, p. 21.

Infectious
rubbish
thrown
into ash-
pits, &c.,
to be dis-
infected.

62.—(1) If a person knowingly casts, or causes or permits to be cast, into any ashpit (a) any rubbish infected by a dangerous infectious disease (b) without previous disinfection, he shall be liable to a fine not exceeding five pounds, and, if the offence continues, to a further fine not exceeding forty shillings for every day during which the offence so continues after the notice hereafter in this section mentioned. (c)

This section is taken from 53 & 54 Vict. c. 34, ss. 13, 14.

(a) The expression "ashpit" includes any ashpit, dustbin, ashtub, or other receptacle for the deposit of ashes or refuse matter. See section 141, *post*.

(b) The corresponding words in 53 & 54 Vict. c. 34, s. 13, are "any infectious rubbish." The words in the text are more explicit; they evidently refer to poultices, rags, &c.

For the meaning of the expression "dangerous infectious disease," see section 58, *ante*, p. 117.

(c) As to the recovery of these penalties, see section 117, *post*. As to the notice, see the next sub-section.

(2) The sanitary authority shall cause their officers to serve notice of the provisions of this section on the

master of any house (a) or part of a house in which they SECT. 62. are aware that there is a person suffering from a dangerous infectious disease, and on the request of such master shall provide for the removal and disinfection or destruction of the aforesaid rubbish. (b)

(a) For the definition of the expression "master of a house," see section 141, *post*.

(b) The concluding words of the sub-section, imposing on the sanitary authority the duty of removing and destroying or disinfection of the rubbish, do not occur in 53 & 54 Vict. c. 34, s. 14.

63.—(1) Any person who knowingly lets for hire any house, or part of a house in which any person has been suffering from any dangerous infectious disease, without having such house or part of a house, and all articles therein liable to retain infection, disinfected to the satisfaction of a legally qualified medical practitioner, as testified by a certificate signed by him, or (as regards the articles) destroyed, shall be liable to a fine not exceeding twenty pounds.

This section is taken, with a slight variation, from 29 & 30 Vict. c. 90, s. 39. It corresponds to section 128 of the Public Health Act, 1875.

The lessor will be entitled to notice from his outgoing tenants if there has been infectious disease in the house within six weeks of his leaving. See section 65, *post*. But the text appears to require an owner to disinfect the house upon re-letting it without regard to the period which may have elapsed since the existence of the disease.

The provision as to the destruction of the infected articles is new.

As to the recovery of the fine, see section 117, *post*.

(2) For the purposes of this section, the keeper of an inn shall be deemed to let for hire part of a house to any person admitted as a guest into such inn.

An inn is defined to be a house in which travellers, passengers, wayfaring men, and other such like casual guests are accommodated with lodgings and whatsoever they reasonably desire for themselves and their

SECT. 63. horses while on their way : 1 "Burn's Justice," p. 64 ; *R. v. Luellin*, 12 Mod. 445 ; *Thompson v. Lacy*, 3 B. & Ald. 283 ; *Reg. v. Rymer*, 5 Q. B. D. 136 ; 46 L. J. M. C. 108 ; 35 L. T. (N.S.) 774 ; 25 W. R. 415 ; 41 J. P. 199.

Note.
Penalty
on persons
letting
houses
making
false state-
ments as
to infec-
tious
disease.

64. Any person letting for hire, or showing for the purpose of letting for hire, any house or part of a house, who, on being questioned by any person negotiating for the hire, as to the fact of there being, or within six weeks previously having been, therein any person suffering from any dangerous infectious disease, knowingly makes a false answer to such question, shall be liable, at the discretion of the court, to a fine not exceeding twenty pounds, or to imprisonment, with or without hard labour, for a period not exceeding one month.

This section is taken from 37 & 38 Vict. c. 89, s. 56, with a restriction as to "dangerous infectious disease," as to which see section 58, *ante*, p. 117. It corresponds to section 129 of the Public Health Act, 1875.

As to the recovery of the fine, see section 117, *post*.

Note.
Penalty
on ceasing
to occupy
house
without
disin-
fec-
tion or
notice to
owner, or
making
false
answer.

65.—(1) Where a person ceases to occupy any house, or part of a house, in which any person has within six weeks previously been suffering from any dangerous infectious disease, and either (a)—

(a.) Fails to have such house, or part of a house, and all articles therein liable to retain infection, disinfected to the satisfaction of a legally qualified medical practitioner, as testified by a certificate signed by him, or such articles destroyed; (b) or

(b.) Fails to give to the owner or master of (c) such house, or part of a house, notice of the previous existence of such disease, or

(c.) On being questioned by the owner or master of, or SECT. 65.
 by any person negotiating for the hire of, such —
 house or part of a house, as to the fact of there
 having within six weeks previously been therein
 any person suffering from any dangerous in-
 fectious disease, knowingly makes a false answer
 to such question,

he shall be liable to a fine not exceeding ten pounds. (d)

This sub-section is taken from 53 & 54 Vict. c. 34, s. 7.

(a) As to what is a dangerous infections disease, see section 58, *ante*,
 p. 117. .

(b) The words "or such articles destroyed" do not occur in 53 & 54
 Vict. c. 34, s. 7.

(c) There is no reference to the "master of the house" in 53 & 54
 Vict. c. 34, s. 7. As to the meaning of the expression, see section 141,
post.

(d) As to the recovery of this penalty, see section 117, *post*.

(2) The sanitary authority shall cause their officers to serve notice of the provisions of this section on the master of any house or part of a house in which they are aware that there is a person suffering from a dangerous infectious disease.

This sub-section is taken from 53 & 54 Vict. c. 34, s. 14.

The expression "master of a house" is defined by section 141,
post.

66.—(1) A person suffering from any dangerous infec- Removal
 tious disease, who is without proper lodging or accommo- to hospital
 dation, or is lodged in a tent or van, or is on board a of infected
 vessel, may, on a certificate signed by a legally qualified persons
 medical practitioner, and with the consent of the super- without
 intending body of the hospital to which he is to be proper
 removed, be removed by order of a justice, and at the lodging.
 cost of the sanitary authority of the district where such

SECT. 66. person is found, to any hospital in or within a convenient distance of London.

This sub-section replaces 29 & 30 Vict. c. 90, s. 26, and 37 & 38 Vict. c. 89, s. 51, except that under these sections the hospital had to be within the district of the sanitary authority, or declared by order of the Local Government Board to be within a convenient distance of the district of the sanitary authority. The corresponding provisions of the Public Health Act, 1875, are sections 124, 125.

For the meaning of the expression "dangerous infectious disease," see section 58, *ante*, p. 117.

The expression "vessel" is defined by section 141, *post*.

"London" means the administrative county of London. See section 141, *post*.

(2) The order may be addressed to such constable or officer of the sanitary authority as the justice making the same thinks expedient; and if any person wilfully disobeys or obstructs the execution of such order he shall be liable to a fine not exceeding ten pounds.

This sub-section is identical with the provision in section 124 of the Public Health Act, 1875.

As to the recovery of the penalty, see section 117, *post*.

(3) Any sanitary authority may make bye-laws for removing to any hospital to which that authority are entitled to remove patients, and for keeping in that hospital so long as may be necessary, any persons brought within their district by any vessel who are infected with a dangerous infectious disease.

Under 29 & 30 Vict. c. 90, s. 29, the sanitary authority were to make rules. Under section 125 of the Public Health Act, 1875, the local authority make regulations. Under the provision in the text bye-laws are to be made.

As to the making of bye-laws, see section 114, *post*.

A sanitary authority are entitled to remove patients to any hospital which they have provided, or for the use of which they have contracted under section 75, *post*.

The expression "vessel" includes a boat and every description of vessel used in navigation. See section 141, *post*.

67.—(1) A justice, on being satisfied that a person suffering from any dangerous infectious disease is in a hospital, and would not on leaving the hospital be provided with lodging or accommodation in which proper precautions could be taken to prevent the spreading of the disease by such person, may direct such person to be detained in the hospital at the cost of the Metropolitan Asylum Managers during the time limited by the justice. Any justice may enlarge the time as often as appears to him necessary for preventing the spread of the disease.

This sub-section is taken, with some variations, from 53 & 54 Vict. c. 34, s. 12.

The maintenance of the patient by the Metropolitan Asylum Managers is not to be deemed parochial relief. See section 80, sub-section (4), *post*. As to the expenses of the managers under this Act, see section 104, *post*.

The expression "hospital" is defined by section 141, *post*. It includes a workhouse hospital, though guardians have power to detain in a workhouse persons suffering from infections or contagious disease under 30 & 31 Vict. c. 106, s. 22.

(2) The direction may be carried into execution by any officer of any sanitary authority or of the Metropolitan Asylum Managers, or by any inspector of police, or any officer of the hospital.

The direction of the justice will justify the forcible detention of the patient in the hospital.

68.—(1) If any person—

(a.) While suffering from any dangerous infectious disease wilfully exposes himself without proper precautions against spreading the said disease in any street, public place, shop, or inn; or

(b.) Being in charge of any person so suffering, so exposes such sufferer; or

Penalty on exposure of infected persons and things.

SECT. 68. (c.) Gives, lends, sells, transmits, removes, or exposes, without previous disinfection, any bedding, clothing, or other articles which have been exposed to infection from any such disease; he shall be liable to a fine not exceeding five pounds.

As to what is a dangerous infectious disease, see section 58, *ante*, p. 117. The expression "street" is defined by section 141, *post*.

The 29 & 30 Vict. c. 90, ss. 25, 38, from which this section is taken, did not extend to exposure in a shop or inn. The provisions of the above sub-section correspond to section 126 of the Public Health Act, 1875.

It has been held to be an indictable offence to expose unnecessarily persons infected with small-pox, whether produced by inoculation or otherwise, in the public streets: *R. v. Vantandillo*, 4 M. & S. 73; *R. v. Burnett*, 4 M. & S. 272. These decisions were cases of exposing children while suffering from disease. The text applies not only to such cases, but to adults exposing themselves.

In *Best v. Stapp or Staff*, 2 C. P. D. 191*n*, a person knowingly took a child recovering from small-pox to a lodging at the seaside, without communicating this fact, and the children of the lodging-house keeper caught the infection, and two of them died. It was held that an action for damages at the suit of the lodging-house keeper was maintainable. Whether if there had been no knowledge on the part of the lodger the action could have been maintained, *query*.

It should be noticed that the person mentioned in clause (b.) as suffering from an infectious disease may be a child or an adult. But the clause does not extend to a dead body, as to which see section 74, *post*.

A medical man in practice in Tunbridge, sent a patient who was suffering from scarlet fever to the fever hospital there with a certificate, directing him to walk in the middle of the road and not to talk to any one, but in consequence of an alleged informality in the certificate, the patient was refused admission, whereupon the medical man walked with him through the streets of the town to the residence of the chairman of the local board, from whom after some delay he obtained an order for the man's admission to the hospital. He then returned with the patient to the police station to procure the ambulance to convey him thither. On an information against the medical man under this sub-section, the justices were of opinion that it was not proved before them that the medical man "had charge of" the patient, that he had not

wilfully exposed the patient in any street or public place "without proper precaution," and that he had made the best use of the means at his disposal to prevent the spread of the fever, and they refused to convict him. It was held that the justices were right: *Tunbridge Wells Local Board v. Bisshopp*, 2 C. P. D. 187.

SECT. 68.
Note.

As to the recovery of the fine, see section 117, *post*.

(2) Provided that proceedings under this section shall not be taken against persons transmitting with proper precautions any bedding, clothing, or other articles for the purpose of having the same disinfected.

The sanitary authority are bound to provide means of removing infected articles for the purpose of disinfection. See section 59, *ante*, p. 118. There is, therefore, no excuse for failing to take proper precautions.

69. A person who knows himself to be suffering from a dangerous infectious disease shall not milk any animal or pick fruit, and shall not engage in any occupation connected with food or carry on any trade or business in such a manner as to be likely to spread the infectious disease, and if he does so he shall be liable to a fine not exceeding ten pounds.

Prohibition on infected person carrying on business.

This is a new and most useful provision.

As to the recovery of the fine, see section 117, *post*.

70. It shall not be lawful for any owner or driver of a public conveyance knowingly to convey, or for any other person knowingly to place, in any public conveyance, a person suffering from any dangerous infectious disease, or for a person suffering from any such disease to enter any public conveyance, and if he does so he shall be liable to a fine not exceeding ten pounds; and if any person so suffering is conveyed in any public conveyance, the owner or driver thereof, as soon as it comes to his knowledge, shall give notice to the sanitary authority

SECT. 70. and shall cause such conveyance to be disinfected, and if he fails so to do, he shall be liable to a fine not exceeding five pounds, and the owner or driver of such conveyance shall be entitled to recover in a summary manner from the person so conveyed by him, or from the person causing that person to be so conveyed, a sum sufficient to cover any loss and expense incurred by him in connection with such disinfection. It shall be the duty of the sanitary authority, when so requested by the owner or driver of such public conveyance, to provide for the disinfection of the same, and they may do so free of charge.

This section is taken from 29 & 30 Vict. c. 90, ss. 25, 38.

The expression "public conveyance" will include a stage or hackney carriage. It seems doubtful whether it would apply to a carriage hired from a jobmaster, and it seems not to extend to a railway carriage.

The fines are recoverable under section 117.

The sum which the driver may recover is recoverable in manner provided by the Summary Jurisdiction Acts (42 & 43 Vict. c. 49), s. 51, sub-section (3).

The provision as to disinfection by the sanitary authority is new.

Inspection of
dairies,
and power
to prohibit
supply of
milk.

71.—(1) If the medical officer of health of any district has evidence that any person in the district is suffering from a dangerous infectious disease, (a) attributable to milk supplied within the district from any dairy, (b) situate within or without the district, or that the consumption of milk from such dairy is likely to cause any such infectious disease to any person residing in the district, such medical officer shall, if authorised by an order of a justice having jurisdiction in the place where the dairy is situate, (c) have power to inspect the dairy, and if accompanied by a veterinary inspector (d) or some other properly qualified veterinary surgeon (e) to inspect the animals therein, and if on such inspection the medical

officer of health is of opinion that any such infectious disease is caused from consumption of the milk supplied therefrom, he shall report thereon to the sanitary authority, and his report shall be accompanied by any report furnished to him by the said veterinary inspector or veterinary surgeon, and the sanitary authority may thereupon serve on the dairyman (b) notice to appear before them within such time, not less than twenty-four hours, as may be specified in the notice, to show cause why an order should not be made requiring him not to supply any milk therefrom within the district until the order has been withdrawn by the sanitary authority.

This section is taken from 53 & 54 Vict. c. 34, ss. 4, 16, 18, 24.

(a) For the meaning of the expression "dangerous infectious disease," see section 58, *ante*, p. 117.

(b) Section 141, *post*, defines the expression "dairy," as including any farm, farmhouse, cowshed, milkstore, milkshop, or other place from which milk is supplied, or in which milk is kept for purposes of sale; and the expression "dairyman" as including any cowkeeper, purveyor of milk, or occupier of a dairy.

(c) The dairy may be in another county, and the order must in that case be made by a justice of that county.

(d) The Contagious Diseases (Animals) Act, 1878, section 5, provides that the expressions "inspector of the Privy Council" or "inspector of a local authority" mean a person appointed to be an inspector for purposes of that Act, by the Privy Council, or the local authority, as the case may be; and "inspector" used alone, means such a person, by whichever authority provided; "veterinary inspector" means an inspector being a member of the Royal College of Veterinary Surgeons, or any veterinary practitioner qualified as approved by the Privy Council. This enactment seems to explain the term used in the text. It may be mentioned that the local authorities for the purposes of the Contagious Diseases (Animals) Acts are now, in a county, the county council; in a quarter sessions borough, which had in 1881 a population exceeding 10,000, the town council; in other towns maintaining their own police, the commissioners or other body maintaining the police.

(e) This means a person whose name is on the register of members of the Royal College of Veterinary Surgeons: 44 & 45 Vict. c. 62.

SECT. 71. (2) The sanitary authority, if, in their opinion, he fails to show such cause, may make the said order, and shall forthwith serve notice of the facts on the county council of the county in which the dairy is situate, and on the Local Government Board, and, if the dairy is situate within the district of another sanitary authority, on such authority.

The order will be one forbidding the dairyman to supply milk from the dairy in question within the district of the sanitary authority until such order shall be withdrawn. See the preceding sub-section.

If the dairy is situated outside the district, the notice must be given not only to the county council of the county, but to the local authority of the district in which it is situated. In any case, notice must be given to the Local Government Board.

(3) The said order shall be forthwith withdrawn on the sanitary authority, or their medical officer of health on their behalf, being satisfied that the milk supply has been changed, or that the cause of the infection has been removed.

The change in the milk supply will only be practicable in the case of a milk seller who buys the milk he sells.

If a medical officer is satisfied as above stated, the sanitary authority have no discretion, but must withdraw the order.

(4) If any person refuses to permit the medical officer of health, on the production of a justice's order under this section, to inspect any dairy, or if so accompanied as aforesaid to inspect the animals kept there, or, after any such order has been made, supplies any milk within the district in contravention of the order, or sells it for consumption therein, he shall, on the information of the sanitary authority, be liable to a fine not exceeding five pounds, and, if the offence continues, to a further fine not exceeding forty shillings for every day during which the offence continues.

As to the recovery of these penalties, see section 117, *post*.

(5) Provided that—

SECT. 71.

(a.) Proceedings in respect of the offence shall be taken before a court having jurisdiction in the place where the dairy is situate, (a) and

(b.) A dairyman shall not be liable to an action for breach of contract if the breach be due to an order under this section. (b)

(a) Thus, if the dairy were in Sussex, the proceedings in respect of the offence would have to be taken in that county, before justices of that county.

(b) The meaning of this proviso appears to be that if the dairyman is under a contract to supply milk within the district, and he is prevented from fulfilling his contract by an order under this section, he is not to be liable to pay damages for breach of contract.

(6) Proceedings may be taken under this section in respect of a dairy situate in the district of a local authority under the Public Health Acts, and the notice of the facts shall be served on the local authority as if they were a sanitary authority within the meaning of this Act.

This sub-section is new. It may be doubted whether it was necessary, having regard to sub-sections (1) and (2). It was probably introduced to avoid the doubt caused by the definition of a sanitary authority in section 99, *post*.

(7) Nothing in or done under this section shall interfere with the operation or effect of the Contagious Diseases (Animals) Acts, 1878 to 1886, or this Act, or of any order, licence, or act of the Board of Agriculture or the Local Government Board thereunder, or of any order, bye-law, regulation, licence, or act of a local authority made, granted, or done under any such order of the Board of Agriculture or the Local Government Board, or exempt any dairy, building, or thing, or any person, from the

SECT. 71. provisions of any general Act relating to dairies, milk, or animals.

This sub-section is a reproduction of section 24 of 53 & 54 Viet. c. 34, except that the Board of Agriculture is now substituted for the Privy Council, pursuant to 52 & 53 Viet. c. 30.

As to the orders of the Local Government Board relating to dairies, and the powers of the local authority under this Act, see section 28, *ante*, p. 60, and the notes thereto.

Prohibition of retention of dead body in certain cases.

72.—(1) A person shall not, without the sanction in writing of the medical officer of health, or of a legally qualified medical practitioner, retain unburied for more than forty-eight hours elsewhere than in a room not used at the time as a dwelling-place, sleeping-place, or work-room, the body of any person who has died of any dangerous infectious disease.

This sub-section is taken from 53 & 54 Viet. c. 34, s. 8, but it omits the words "elsewhere than in a public mortuary," after the word "unburied." It is obvious that the words now omitted were unnecessary.

The necessary written sanction may be given by the medical man who was in attendance on the deceased, and he may give it even if he thinks it may be dangerous to retain the body, as the sub-section does not require him to be satisfied that there is no danger. When the sanction is not given, the body may be removed to a mortuary under section 89, *post*.

As to what is a dangerous infectious disease, see section 58, *ante*, p. 117.

(2) If a person acts in contravention of this section he shall, on the information of the sanitary authority, be liable to a fine not exceeding five pounds.

As to the recovery of this penalty, see section 117, *post*.

Body of person dying of infectious disease in

73.—(1) If a person dies in a hospital from any dangerous infectious disease, and the medical officer of health, or any legally qualified medical practitioner, certifies that, in his opinion, it is desirable, in order to prevent the risk

of communicating such infectious disease, that the body ^{SECT. 73.} be not removed from such hospital except for the purpose ^{hospital,} of being forthwith buried, it shall not be lawful for any ^{&c., to be} person to remove the body except for that purpose; and ^{removed} the body when taken out of such hospital shall be forth- ^{only for} with taken direct to the place of burial, and there buried.

This provision is taken from 53 & 54 Viet. c. 34, s. 9.

The expression "hospital" is defined by section 141, *post.* As to what is a dangerous infectious disease, see section 58, *ante*, p. 117.

(2) If any person wilfully offends against this section he shall, on the information of the sanitary authority, be liable to a fine not exceeding ten pounds.

As to the recovery of this penalty, see section 117, *post.*

(3) Nothing in this section shall prevent the removal of a dead body from a hospital to a mortuary, and such mortuary shall, for the purposes of this section, be deemed part of such hospital.

See, as to mortuaries, sections 88—93, *post.*

The mortuary is to be deemed part of the hospital for the purpose of preventing its removal, except for burial, as if it were a hospital within the meaning of sub-section (1).

74. If—

(a.) A person hires or uses a public conveyance other than a hearse for conveying the body of a person who has died from any dangerous infectious disease, without previously notifying to the owner or driver of the conveyance that such person died from infectious disease, or

(b.) The owner or driver does not, immediately after the conveyance has to his knowledge been used for conveying such body, provide for the disinfection of the conveyance,

Disinfection of
public con-
veyances
if used for
carrying
corpses.

SECT. 74. he shall, on the information of the sanitary authority, be liable to a fine not exceeding five pounds, and if the offence continues, to a further fine not exceeding forty shillings for every day during which the offence continues.

This section is taken from 53 & 54 Vict. c. 34, s. 11. It supplies an omission in section 126 of the Public Health Act, 1875.

As to what is a public conveyance, see the note to section 70, *ante*, p. 130.

As to the recovery of the penalty, see section 117, *post*.

Hospitals and Ambulances. Power of sanitary authority to provide hospitals.

Hospitals and Ambulances.

75.—(1) Any sanitary authority may provide for the use of the inhabitants of their district hospitals, temporary or permanent, and for that purpose may—

- (a.) Themselves build such hospitals, or
- (b.) Contract for the use of any hospital or part of a hospital, or
- (c.) Enter into any agreement with any person having the management of any hospital for the reception of the sick inhabitants of their district, on payment of such annual or other sum as may be agreed on.

As to what is included in the expression "hospital," see section 141, *post*.

The section is taken from 29 & 30 Vict. c. 90, s. 37, and corresponds to section 131 of the Public Health Act, 1875.

This section is permissive in terms. It does not create any duty or obligation on the part of the sanitary authority to provide hospitals. The statute will not, therefore, be any defence to an action against the sanitary authority, nor will it prevent the issuing of an injunction against them if they erect a hospital for infectious disease so as to be a nuisance to any person. This was so held with reference to a similar permissive provision in the Metropolitan Poor Act (30 Vict. c. 6), in *The Managers of the Metropolitan Asylum District v. Hill and*

Others, 6 App. Cas. 193; 50 L. J. Q. B. 353; 44 L. T. (N.S.) 653; 27 SECT. 75. W. R. 617; 45 J. P. 664.

Note.

With regard to hospitals for small-pox or fever patients, it has been questioned how far they could be erected in a town. In *Baines v. Baker*, Amb. 159; 3 Alk. 750, the Lord CHANCELLOR refused an injunction to stay the erection of a small-pox hospital in Coldbath Fields, in London, and referred to a case of *R. v. Frewen*, where on indictment for a nuisance in erecting such a hospital in Sussex, the defendant was acquitted. In *The Managers of the Kensington Sick Asylum District v. Gunter* (not reported), WICKENS, V.C., intimated an opinion in conformity with the previous decision. The rule in such cases seems to be that laid down by Lord BLACKBURN in *The Metropolitan Asylum Board v. Hill*, *supra*, "To gather together in one spot patients suffering from infectious disease is lawful, but it must be under such guards as not to endanger the public health by communicating this infectious disease; and, as it seems to me, so as not to produce injury to the rights of the owners of adjoining property by producing a nuisance to it." In a Scotch case, *Mutter v. Fyfe*, 11 Ct. of Sess. Cas., 2nd series, 303, the Court of Session held that a cholera hospital was not necessarily a nuisance, and refused to restrain its erection.

In *Chambers v. The Managers of the Metropolitan Asylums District*, 25 S. J. 834, CAVE and KAY, JJ., granted an interlocutory injunction restraining the defendants until the trial of the action from sending any more small-pox patients into their Fulham Hospital. The court appear to have acted upon evidence given to the effect that the hospital was a centre of contagion. In *Fleet v. The Managers of the Metropolitan Asylums District*, 2 T. L. R. 361, the defendants had established within 685 yards of the plaintiff's house a small-pox camp. The plaintiff alleged that the health of the neighbourhood had been endangered by the camp, and that the camp was a nuisance, and claimed an injunction to restrain the defendants from maintaining it. PEARSON, J., held that the plaintiff had failed to prove that there was any danger to him or those residing upon his property, and that the action must be dismissed. An interim injunction was granted in a subsequent case restraining a sanitary authority from continuing a small-pox hospital, on the ground that there was an appreciable injury to the plaintiff's property: *Bendelow v. Wortley Union (Guardians of)*, 57 L. J. Ch. 762; 57 L. T. (N.S.) 849; 36 W. R. 168.

Before contracting for the use of any building other than a hospital or part of a hospital, it may be well to inquire whether there is any covenant which prevents the use of the premises as a hospital. The use

SECT. 75. of premises for this purpose has been held to be a *business* where the patients made small payments according to their means: *Bramwell v. Lacy*, 10 Ch. D. 691; 48 L. J. Ch. 339; 40 L. T. (N.S.) 361; 27 W. R. 463; 43 J. P. 446; *Portman v. The Home Hospitals Association*, W. N. [1879], p. 196; *Tod Heatly v. Benham*, 40 Ch. D. 80; 37 W. R. 38.

Note. (2) Two or more sanitary authorities may combine in providing a common hospital.

The combination must be effected by agreement. With regard to the terms as to expenses, a convenient plan is for each authority to contribute a fixed proportion of establishment charges, and to share the other expenses in proportion to the number of patients sent from each district.

Recovery
of cost of
main-
tenance of
non-infec-
tious pa-
tient in
hospital.

76. Any expenses incurred by a sanitary authority in maintaining in a hospital (whether or not belonging to that authority) a patient who is not a pauper, and is not suffering from an infectious disease, shall be a simple contract debt due to the sanitary authority from that patient, or from any person liable by law to maintain him, but proceedings for its recovery shall not be commenced after the expiration of six months from the discharge of the patient, or if he dies in such hospital from the date of his death.

In order that the sanitary authority may be able to recover two conditions are imposed:—(1) The patient must not be a pauper, *i.e.*, in receipt of relief; (2) he must not be suffering from a dangerous infectious disease as defined by section 58. If he is suffering from such a disease the cost of his maintenance will fall upon the sanitary authority, even if he is not a pauper, except where he is ordered to be detained at the cost of the Metropolitan Asylum Managers under section 68, *ante*, p. 128.

The debt will be recoverable in the county court. It seems doubtful whether it can be recovered summarily under section 117, *post*.

Under 42 & 43 Vict. c. 54, s. 15, the debt was to be recovered from

the patient or his representatives. Under the provision in the text it is to be recovered from any person liable by law to maintain him. It is not quite clear whether this refers to the common law liability or the liability under the poor law to maintain relatives unable to work. The distinction is important, for a son is not at common law liable to maintain his father, yet he is liable under 43 Eliz. c. 2, s. 7, if his father is unable to work.

SECT. 76.
Note.

77. Any sanitary authority may, with the sanction of the Local Government Board, themselves provide or contract with any person to provide, a temporary supply of medicine and medical assistance for the poorer inhabitants of their district.

This section is taken from 31 & 32 Vict. c. 115, s. 10. It corresponds to section 133 of the Public Health Act, 1875.

78. A sanitary authority may provide and maintain carriages suitable for the conveyance of persons suffering from any infectious disease, and pay the expense of conveying therein any person so suffering to a hospital or other place of destination.

This section replaces 23 & 24 Vict. c. 77, s. 12, and 29 & 30 Vict. c. 90, s. 24. It is in terms identical with section 123 of the Public Health Act, 1875.

The Metropolitan Asylums Board had power to provide ambulances under 42 & 43 Vict. c. 54, s. 16. And by 52 & 53 Vict. c. 56, s. 6, the Board might allow their carriages to be used for the conveyance of persons suffering from any dangerous infectious disorder to and from hospitals and places other than asylums provided by them, and may make reasonable charges for that use. These provisions are re-enacted in the next section.

79.—(1) The Metropolitan Asylum Managers shall continue to maintain the wharves, landing-places, and approaches thereto heretofore provided by them, whether within or without London, and may use the same for Power for Metro-
politan
Asylum
Board to
provide

SECT. 79. the embarkation and landing of persons removed to or from any hospital belonging to the managers, and for any other purpose in relation thereto.

landing places, vessels, ambulances, &c. The Metropolitan Asylum Managers were required by 46 & 47 Vict. c. 35, s. 6, to provide on the banks of the river Thames, wharves or landing-places, not exceeding three in number, within the metropolis, and one wharf or landing-place beyond the metropolis, with convenient approaches thereto respectively, for the embarkation and landing of persons removed to or from any hospital ship, or hospital belonging to the managers, and for any other purpose in relation thereto. The 46 & 47 Vict. c. 35, is repealed by this Act, but the above section requires them to keep up the wharves, &c., already provided under the repealed statute.

(2) The managers may also provide and maintain vessels for use in connection with the said wharves or landing-places, and with the hospitals of the managers, and also carriages suitable for the conveyance of persons suffering from any dangerous infectious disease, and shall cause the vessels and carriages to be from time to time properly cleansed and disinfected, and may provide and maintain such buildings and horses, and employ such persons, and do such other things as are necessary or proper for the purposes of such conveyance.

This sub-section re-enacts 42 & 43 Vict. c. 54, s. 16, and 52 & 53 Vict. c. 56, s. 6. As to the expenses of the managers for purposes of this section, see section 104, *post*.

(3) The Metropolitan Asylum Managers may allow any of the said carriages with the necessary attendants to be also used for the conveyance of persons suffering from any dangerous infectious disease to and from hospitals and places other than hospitals provided by the managers, and may make a reasonable charge for that use.

This sub-section is taken from 52 & 53 Vict. c. 56, s. 6. See section 78, and the note thereto, *ante*, p. 139.

80.—(1) The Metropolitan Asylum Managers, subject SECT. 80. to such regulations and restrictions as the Local Government Board prescribe, may admit any person, who is not a pauper, and is reasonably believed to be suffering from fever or small-pox or diphtheria into a hospital provided by the managers.

This sub-section is a re-enactment of 52 & 53 Vict. c. 56, s. 3. The hospitals provided by the managers were intended for the reception of the sick, insane, infirm, or other class or classes of the poor chargeable in unions and parishes in the metropolis. See 30 Vict. c. 6, s. 5. Under the provision in the text, a patient who is not a pauper may be admitted, if he is suffering from fever or small-pox or diphtheria.

(2) The expenses incurred by the managers for the maintenance of any such person shall be paid by the board of guardians of the poor law union from which he is received.

(3) The said expenses shall be repaid to the board of guardians out of the Metropolitan Common Poor Fund.

Under 52 & 53 Vict. c. 56, s. 3, the expenses were recoverable as a debt from the patient, or from any person liable by law to maintain him, but in so far as they were not recovered they were to be paid out of the Metropolitan Poor Fund. The patient and his relatives are no longer to be liable, and the entire expense must be paid out of that fund.

The Metropolitan Common Poor Fund is raised by contributions from the several unions, parishes, and places in the metropolis, assessed according to rateable value, upon precepts issued by the Local Government Board. The fund is paid to a receiver appointed by that board, and it is applied to a variety of purposes, among which are the maintenance of patients in fever or small-pox asylums. The Acts relating to its establishment, application, &c., are: 30 Vict. c. 6, ss. 61—72; 31 & 32 Vict. c. 122, s. 11; 32 & 33 Vict. c. 63, ss. 18, 21; 33 & 34 Vict. c. 18, ss. 1, 2; 34 & 35 Vict. c. 15; 39 & 40 Vict. c. 61, s. 43; 39 & 40 Vict. c. 79, ss. 10, 16, 40, 43; 42 & 43 Vict. c. 54, s. 19.

(4) The admission of a person suffering from an infectious disease into any hospital provided by the

SECT 80. Metropolitan Asylum Managers, or the maintenance of any such person therein, shall not be considered to be parochial relief, alms, or charitable allowance to any person, or to the parent or husband of any person; nor shall any person or his or her parent or husband be by reason thereof deprived of any right or privilege, or be subjected to any disability or disqualification.

This is a re-enactment of 46 & 47 Vict. e. 35, s. 7.

Reception
into
hospital in
Metropoli-
tan
district of
child from
school
outside
London.

81.—(1) Where the London School Board send any child to an industrial school which is provided by them outside London, such child shall, for the purpose of the enactments relating to the Metropolitan Asylum Managers, be deemed to continue to be an inhabitant of London, and if such child is sent to any hospital of those managers he shall be deemed to have been sent from that place in London from which he was sent to the said industrial school.

The guardians of the place in London from which the child was sent to the school must, therefore, pay for his maintenance while in the hospital under section 80, sub-section (2), *ante*, p. 141, and if the child is detained in the hospital under section 69, the expenses of maintenance must be defrayed by the managers.

(2) This section shall apply to that part of London which is not within the Metropolitan Asylum district as if it were within that district, and the board of guardians of the poor law union comprising that part shall pay for such child accordingly.

“London” means the administrative county of London. See section 141, *post*. For full information as to the unions and parishes comprised in the Metropolitan Asylum district, the reader is referred to Maemorran and Lushington’s “Poor Law General Orders,” p. 850.

SECT. 82.

Prevention of Epidemic Diseases.

82.—(1) The sanitary authority of any district within which or part of which regulations issued by the Local Government Board, in pursuance of section one hundred and thirty-four of the Public Health Act, 1875, set out in the First Schedule to this Act (in this Act referred to as the epidemic regulations), are in force, shall superintend and see to the execution thereof, and shall appoint and pay such medical or other officers or persons, and do and provide all such acts, matters, and things as may be necessary for mitigating any disease to which the regulations relate, or for superintending or aiding in the execution of such regulations, or for executing the same, as the case may require.

*Preven-
tion of
Epidemic
Diseases.*
Sanitary
authority
to execute
epidemic
regula-
tions.
38 & 39
Viet. e. 55.

See section 134 of the Public Health Act, 1875, as applied by Schedule 1, *post*.

The foregoing sub-section is taken from the Diseases Prevention Act, 1855 (18 & 19 Viet. e. 116), s. 8. It corresponds with section 136 of the Public Health Act, 1875.

(2) The sanitary authority may direct any prosecution or legal proceedings for or in respect of the wilful violation or neglect of any such regulation.

This sub-section is taken from 18 & 19 Viet. e. 116, s. 9.

(3) The sanitary authority shall have power to enter on any premises or vessel for the purpose of executing or superintending the execution of any of the epidemic regulations.

This sub-section is taken from 18 & 19 Viet. e. 116, s. 4, and corresponds to section 137 of the Public Health Act, 1875.

See section 115, *post*, which contains general provisions as to entry and the means of enforcing it.

The expressions "premises" and "vessel" are defined in section 141, *post*.

Poor law medical officers entitled to costs of attendance on board vessels. **83.**—(1) Whenever, in compliance with the epidemic regulations, any poor law medical officer performs any medical service on board any vessel, he shall be entitled to charge extra for such service, at the general rate of his allowance for services for the poor law union for which he is appointed; and such charges shall be paid by the master of the vessel on behalf of the owners thereof, together with any reasonable expenses for the treatment of the sick.

This section is taken from 18 & 19 Vict. e. 116, s. 12, and corresponds to section 138 of the Public Health Act, 1875.

The expression "master" means the master or other person in charge of the vessel. See section 141, *post*.

(2) Where such service is rendered by any medical practitioner who is not a poor law medical officer, he shall be entitled to charge for the service with extra remuneration on account of distance, at the rate which he is in the habit of receiving from private patients of the class of those attended and treated on shipboard, and such charge shall be paid as aforesaid. Any dispute in respect of such charge may, where the charges do not exceed twenty pounds, be determined by a petty sessional court; and that court shall determine summarily the amount which is reasonable, according to the accustomed rate of charge within the place where the dispute arises for attendance on patients of the like class as those in respect of whom the charge is made.

It is very unlikely that the charges will ever exceed 20*l.* in any one case, but if they did any dispute as to them could only be determined on an action.

The expression "petty sessional court" was explained in the note to section 5, sub-section (8), *ante*, p. 21.

Local Government

84. The Local Government Board may, if they think fit, by order authorise or require any two or more sani-

tary authorities to act together for the purposes of the SECT. 84. epidemic regulations and prescribe the mode of such joint action, and of defraying the cost thereof, and generally may make any regulations necessary or proper for carrying into execution this section.

Board may combine sanitary authorities.

This section takes the place of 29 & 30 Vict. c. 90, s. 40, and corresponds to section 139 of the Public Health Act, 1875.

85.—(1) The Metropolitan Asylum Managers shall within their district have, for the purpose of the epidemic regulations, such powers and duties of a sanitary authority as may be assigned to them by the regulations; and the Local Government Board may make regulations for that purpose and thereby provide for the adjustment of the functions of the managers relatively to those of any sanitary authorities.

This sub-section is taken from 46 & 47 Vict. c. 35, s. 10.

(2) Subject to such regulations the Metropolitan Asylum Managers may use any of their property, real or personal, and their staff, for the execution of any powers or duties conferred or imposed on them under this section.

This sub-section is taken from 46 & 47 Vict. c. 35, s. 2.

86. Any authority or body of persons having the management and control of any hospital, infirmary, asylum, or workhouse may let the same or any part thereof to the Metropolitan Asylum Managers, and enter into and carry into effect contracts with those managers for the reception, treatment, and maintenance therein of persons suffering from cholera or choleraic diarrhoea within the district of the managers:

SECT. 86. Provided that the power conferred by this section shall not, without the consent of the Local Government Board, be exercised with respect to any asylum under the Metropolitan Poor Act, 1867, or any workhouse.

30 & 31

Viet. e. 6. This section is simply a re-enactment of 46 & 47 Viet. e. 35, s. 3.

The expression "hospital" is defined by section 141, *post*.

Repay-
ment to
sanitary
authorities
of certain
expenses.

87. The amount expended in pursuance of the epidemic regulations by any sanitary authority in providing any building for the reception of patients or other persons shall, to such extent as may be determined by the Local Government Board, together with two-thirds of the salaries or remuneration of any officers or servants employed in any such building under this Act, be repaid to such sanitary authority from the Metropolitan Common Poor Fund by the receiver of that fund, out of any moneys for the time being in his hands, on the precept of the said Board, to be issued after the production of such evidence in support of the expenditure as they may deem satisfactory, and the said Board may require contributions for the purpose of raising the sums so repayable.

As to the Metropolitan Common Poor Fund, the receiver, &c., see the note to section 80, *ante*, p. 141.

Mortua-
ries, &c.

Power of
local au-
thority to
provide
mortua-
ries.

Mortuaries, &c.

88. Every sanitary authority shall provide and fit up a proper place for the reception of dead bodies before interment (in this Act called a mortuary), and may make bye-laws with respect to the management and charges for the use of the same; they may also provide for the decent and economical interment, at charges to be fixed

by such bye-laws, of any dead body received into a SECT. 88. mortuary.

Under 29 & 30 Vict. c. 90, s. 27, the power to provide a mortuary was permissive. The text imposes an obligation on the sanitary authority, and such obligation may be enforced in manner provided by sections 100, 101, *post*.

As to the making of bye-laws, see section 114, *post*.

Sanitary authorities may combine to provide a mortuary under section 91, *post*.

As to the removal of dead bodies to a mortuary, see the next section.

89.—(1) Where either—

- (a.) The body of a person who has died of any infectious disease is retained in a room in which persons live or sleep; or
- (b.) The body of a person who has died of any dangerous infectious disease is retained without the sanction of the medical officer of health or any legally qualified medical practitioner for more than forty-eight hours, elsewhere than in a room not used at the time as a dwelling-place, sleeping-place, or work-room; or
- (c.) Any dead body is retained in any house or room, so as to endanger the health of the inmates thereof, or of any adjoining or neighbouring house or building,

a justice may, on a certificate signed by a medical officer of health or other legally qualified medical practitioner, direct that the body be removed, at the cost of the sanitary authority, to any available mortuary, and be buried

Power of justice in certain cases to order removal of dead body to mortuary.

SECT. 89. within the time limited by the justice; and may, if it is the body of a person who has died of an infectious disease, or if he considers immediate burial necessary, direct that the body be buried immediately, without removal to the mortuary.

Clause (a.) is taken from 29 & 30 Vict. c. 90, s. 27. Clause (b.) is taken from 53 & 54 Vict. c. 34, s. 10. Clause (c.) is taken from 29 & 30 Vict. c. 90, s. 27, but the concluding words "or of any adjoining or neighbouring house or building," are taken from 53 & 54 Vict. c. 34, s. 10. The rest of the section is taken from both Acts with slight amendments.

It is worthy of notice that clause (a.) relates to any infectious disease, while clause (b.) relates only to a dangerous infectious disease, an expression defined by section 58, *ante*, p. 117. Clause (c.) relates to any dead body.

The body of a person who has died of a dangerous infectious disease may be retained with the sanction of a medical practitioner or of the medical officer of health, in a room used as a dwelling-place, &c. See section 72, *ante*, p. 134.

The concluding words, "without removal to the mortuary," are new.

(2) Unless the friends or relations of the deceased undertake to bury and do bury the body within the time so limited, it shall be the duty of the relieving officer to bury such body, and any expense so incurred shall be paid (in the first instance) by the board of guardians of the poor law union, but may be recovered by them in a summary manner from any person legally liable to pay the expense of such burial.

This sub-section is taken from 53 & 54 Vict. c. 34, s. 10.

The person in whose house the dead body lies is bound by common law to inter the body decently: *Reg. v. Price*, 12 Q. B. D., at p. 252. On this ground it was held that the authorities of a public hospital, and not the guardians, were liable to bury a person who had died in the hospital: *Reg. v. Stewart*, 12 A. & E. 773; 10 L. J. M. C. 40. An executor is liable to pay funeral expenses: *Brice v. Wilson*, cited in

Green v. Shannon, 8 A. & E. 384; *Rogers v. Price*, 3 Y. & I. 28. A SECT. 89. Note.
 hnsband is liable for the expenses of burying his wife: *Jenkins v. Tucker*, 1 H. Bl. 91; *Ambrose v. Kerrison*, 10 C. B. 776; 20 L. J. C. P. 135; *Bradshaw v. Beard*, 12 C. B. (N.S.) 344. A parent is bound to provide for the burial of his child if he has the means, but not if he has no means, nor is he bound to apply for relief by way of loan from the gnardians to enable him to do so: *Reg v. Vann*, 21 L. J. M. C. 39.

(3) If any person obstructs the execution of any direction given by a justice under this section, he shall be liable to a fine not exceeding five pounds.

As to the reeover of this penalty, see section 117, *post*.

90.—(1) Any sanitary authority may, and if required by the county council shall, provide and maintain a proper building (otherwise than at a workhouse) for the reception of dead bodies during the time required to conduct any *post-mortem* examination ordered by a coroner or other constituted authority, and may make regulations with respect to the management of such building.

Power of sanitary authority to provide places for *post-mortem* examinations.

This sub-section is taken from 29 & 30 Viet. c. 90, s. 28, and corresponds to section 143 of the Pnublic Health Act, 1875.

The sanitary authority may make regulations for the management of the building. These regulations do not require confirmation like bye-laws.

The sanitary authority may borrow money to provide a *post-mortem* room. See section 105, *post*.

The Coroners Act, 1887 (50 & 51 Viet. c. 71), s. 24, provides that when a place has been provided by a sanitary authority for the reception of dead bodies during the time required to conduct a *post-mortem* examination, the coroner may order the removal of a dead body to and from such place for carrying out such examination, and the cost of such removal shall be deemed to be part of the expenses incurred in and about the holding of an inquest.

(2) Any such building may be provided in connection with a mortuary, but this enactment shall not authorise

SECT. 90. the conducting of any *post-mortem* examination in a mortuary.

The repealed Act provided that the *post-mortem* room should not be at a mortuary-house. The provision in the text is an obvious improvement.

Power to
sanitary
authorities
to unite
for pro-
viding
mortuary.

91. Any sanitary authorities may, with the approval of the county council, execute their duty under this Act with respect to mortuaries and buildings for *post-mortem* examinations by combining for the purpose thereof, or by contracting for the use by one of the contracting authorities of any such mortuary or building provided by another of such contracting authorities, and may so combine or contract upon such terms as may be agreed upon.

This provision is new. Two or more authorities may agree to provide a common mortuary or *post-mortem* room. The agreement may provide for the share of the cost to be contributed by each for the building and its maintenance, or one sanitary authority may provide the mortuary, &c., and permit its use by another at such charges as may be agreed upon.

Place for
holding
inquests.

92. The county council shall provide and maintain proper accommodation for the holding of inquests, and may, by agreement with a sanitary authority, provide and maintain the same in connexion with a mortuary or a building for *post-mortem* examinations provided by that authority, or with any building belonging to that authority, and may do so on such terms as may be agreed on with the authority.

This is a new provision. It should be observed that the section is imperative.

It will be convenient to have the place for holding inquests in connection with or very near the mortuary.

93.—(1) The county council may provide and fit up in SECT. 93. London one or two suitable buildings to which dead bodies found in London and not identified, together with any clothing, articles, and other things found with or on such dead bodies, may on the order of a coroner be removed, and in which they may be retained and preserved with a view to the ultimate identification of such dead bodies.

This section replaces section 22 of the London Council (General Powers) Act, 1890 (53 & 54 Vict. c. ccxlii). No such building as is mentioned in the section has yet been provided.

(2) A Secretary of State may make regulations as to—

(a.) The manner in which and conditions subject to which any such bodies shall be removed to any such building, and the payments to be made at such building to persons bringing any unidentified dead body for reception; and

(b.) The fees and charges to be paid upon the removal or interment of any such dead body which has been identified after its reception, and the persons by whom such fees and payments are to be made, and the manner and method of recovering the same; and

(c.) The disposal and interment of any such bodies.

There is no definition in this Act of the expression “Secretary of State.” It usually is defined to mean one of Her Majesty’s Principal Secretaries of State, and practically means the Home Secretary.

(3) The county council may provide at the said buildings all such appliances as they think expedient for the reception and preservation of bodies, and may make

SECT. 93. regulations (subject to the provisions aforesaid) as to the management of the said buildings and the bodies therein, and as to the conduct of persons employed therein or resorting thereto for the purpose of identifying any body.

These regulations are not bye-laws, and do not require confirmation.

The provisions referred to are the regulations made by the Secretary of State under the preceding sub-section.

(4) Subject to and in accordance with such regulations as may be made by a Secretary of State, any such body found in London may (on the order in writing of a coroner holding or having jurisdiction to hold the inquest on the same) be removed to any building provided under this section, and, subject as aforesaid, the inquest on any such body shall be held by the same coroner and in the same manner as if the said building were within the district of such coroner.

This provision was necessary, for an inquest is held by the coroner of the district where the body is, and under this section, a body might be moved from the district of one coroner to the district in which the building is situate.

*Bye-laws
as to
Houses let
in Lodg-
ings.*
*Power of
sanitary
authority
to make
bye-laws
as to
lodging-
houses.*

Bye-laws as to Houses let in Lodgings.(a)

94.—(1) Every sanitary authority shall make and enforce such bye-laws(b) as are requisite for the following matters; (that is to say,) (a.) For fixing the number of persons who may occupy a house or part of a house which is let in lodgings or occupied by members of more than one family, and for the separation of the sexes in a house so let or occupied :(c)

(b.) For the registration of houses so let or occupied: SECT. 94.

(c.) For the inspection of such houses:

(d.) For enforcing drainage for such houses, and for promoting cleanliness and ventilation in such houses: (d)

(e.) For the cleansing and lime-washing at stated times of the premises:

(f.) For the taking of precautions in case of any infectious disease. (e)

(a) This section re-places 29 & 30 Vict. c. 90, s. 35, and 37 & 38 Vict. c. 89, s. 47. It corresponds to section 90 of the Public Health Act, 1875, as amended by 48 & 49 Vict. c. 72, s. 8. It differs in some particulars from all these enactments.

(b) As to the making of bye-laws, see section 114, *post*. The Local Government Board have issued model bye-laws under the corresponding section of the Public Health Act, 1875. In the memorandum prefixed to these bye-laws, it is stated that the board have had regard to the judgment of GROVE, J., in *Langdon v. Broadbent*, 37 L. T. (N.S.) 434; 42 J. P. 56, and have exempted from the operation of the bye-laws certain houses let in lodgings, which, from their character, are not likely to require supervision. The memorandum states that the exemption clause consists of two sections, of which one relates to unfurnished, and the other to furnished lodgings. It assumes that all houses below a certain rateable value will, if let in lodgings or occupied by members of more than one family, be within the scope of the bye-laws. In the case of houses of higher rateable value, the clause confers exemption if the rent of each lodger exceeds a certain minimum. It will rest with the local authority when framing bye-laws upon the basis of the model series, to determine what limits of ratable value or rent the circumstances of their district may render it desirable to prescribe.

(c) The provision for the separation of the sexes did not occur in 29 & 30 Vict. c. 90, s. 35, though it does occur in section 90 of the Public Health Act, 1875. In the model series above mentioned, the Local Government Board have deemed it inexpedient to provide for a variation of the number of occupants or for the separation of the sexes.

SECT. 94. The omission of the latter provision is due "to the doubt which the Note. Board have entertained as to how far this desirable object can be practically attained, in view of the ordinary conditions of life in lodgings of the poorer class. When, however, the local authority are satisfied that a rule on this subject can be enforced without hardship, as, for instance, in cases where it is found that individual holdings in the lodging-houses of a district generally comprise two or more rooms, the Board will readily co-operate with the authority in framing a bye-law to provide for the separation of the sexes."

A bye-law made under the corresponding provisions of the Public Health Act, 1875, required certain particulars to be furnished to the local authority by the occupiers of houses let in lodgings or occupied by members of more than one family. The defendant was charged under this bye-law, and it was proved that she was the tenant of a house, sub-letting unfurnished rooms to one person and occupying the rest of the house herself. It was held on a case stated that the house was a lodging-house within the meaning of the bye-law, and that there was nothing unreasonable in a bye-law applying to such a house: *Roots v. Beaumont*, 51 J. P. 197.

(d) The words of the repealed Act were "for enforcing therein the provision of privy accommodation, and other appliances and means of cleanliness in proportion to the number of lodgers and occupiers." Having regard to the powers conferred by this Act upon the sanitary authority with regard to the providing of water-closets, it seems to have been thought unnecessary to repeat that provision in the bye-laws.

(e) This clause did not occur in 29 & 30 Vict. c. 90, s. 35, though it does occur in the Public Health Act, 1875, s. 90.

14 & 15 Vict. c. 28. (2) This section shall not apply to common lodging-houses within the Common Lodging-Houses Act, 1851, or
16 & 17 Vict. c. 41. any Act amending the same.

The Common Lodging-Houses Acts (14 & 15 Vict. c. 28, and 16 & 17 Vict. c. 41) were repealed by the Public Health Act, 1875, except so far as relates to the metropolitan police district, and they are still in force in that district. The metropolitan police district, as provided by 10 Geo. 4, c. 44, ss. 4, 34, and extended by Orders in Council under 2 & 3 Vict. c. 47, s. 2, now includes the county of London exclusive of the city and its liberties, the county of Middlesex, the county boroughs of Croydon and West Ham, and certain parishes and places in the counties of Surrey, Kent, Herts, and Essex, a full list of which will be found in the "Metropolitan Police Guide," at p. 28.

These Acts contain no definition of a common lodging-house. **SECT. 91.** Chief Justice COCKBURN and Lord HATHERLEY, when law officers of the Crown, advised the General Board of Health in 1853, thus:—"It may be difficult to give a precise definition of the term 'common lodging-house'; but looking to the preamble and general provisions of the Act (14 & 15 Vict. c. 28), it appears to us to have reference to that class of lodging-house in which persons of the poorer class are received for short periods, and, *though strangers to one another*, are allowed to inhabit one common room. We are of opinion that it does not include hotels, inns, public-houses, or lodgings let to the upper and middle classes." They afterwards explained the passage as to strangers thus:—"Our obvious intention was to distinguish lodgers promiscuously brought together from members of one family or household." And they added that, in their opinion, "the period of letting is unimportant in determining whether a lodging-house comes under the Act now in question." In the memorandum prefixed to the model bye-laws issued by the Local Government Board under section 80 of the Public Health Act, 1875, it is stated that, so far as the foregoing definition of a common lodging-house rests upon the basis of the habitation of a common room by lodgers who are strangers to one another in the sense of not being members of one family or household, it may be inferred that this characteristic equally distinguishes the common lodging-houses to which this Act applies; and that such an inference receives support from the terms of section 87 of that Act.

In *Langdon v. Broadbent*, 37 L. T. (N.S.) 434; 42 J. P. 56, it was held that a lodging-house where hawkers and persons of a similar class were received, staying for various periods, having their meals in one room and paying sixpence a night, was a lodging-house within the above section. GROVE, J., said: "Each case must be decided on its own facts. There may be lodging-houses resorted to by a higher class of persons to which the term 'common lodging-house' would not be applicable. The case does not find whether the lodgers occupied separate sleeping apartments. But I do not think it is necessary to show that the lodgers are all herded together in order to bring the case within the statute. Even if a common room is necessary to constitute a common lodging-house, the evidence here shows that they all took their meals together." And see *Halligan v. Ganly*, 19 L. T. (N.S.) 268.

Section 3 of the Common Lodging-Houses Act, 1853, provides that "a person shall not keep a common lodging-house or receive a lodger therein until the house has been inspected and improved for that purpose by some officer appointed in that behalf by the local authority and

Note.

SECT. 94. has been registered." The appellant opened and kept a lodging-house for the reception of male lodgers, who slept in one common room capable of accommodating 100 persons. The lodgers were charged, at the discretion of the manager, a sum not exceeding 4d. per night for bed, supper, and breakfast; but the house was maintained, not for the purpose of gain, but for the accommodation of the poorest class of persons only, partly with a charitable and partly with a religious object. The house had not been inspected or approved by the officer of the local authority, nor was it registered. The appellant having been summoned and convicted for keeping a common lodging-house in contravention of the provisions of the above section, it was held that the house, being maintained as a charitable institution and not for purposes of gain, was not a common lodging-house within the meaning of the Act, and that the conviction could not be supported. MATHEW, J., said: "A common lodging-house in its ordinary sense means a lodging-house kept by somebody for the purpose of profit, and open to all comers, whether of a certain class or not. It is to lodging-houses of that description that the legislature has confined itself. But this particular institution presents neither of these conditions": *Booth v. Ferrett*, 25 Q. B. D. 87; 59 L. J. M. C. 136; 55 J. P. 7; 6 T. L. R. 337.

*Tents and
Vans.*

Tents and
vans used
for human
habitation.

Tents and Vans.

95.—(1) A tent, van, shed, or similar structure used for human habitation, which is in such a state as to be a nuisance or injurious or dangerous to health, or is so over-crowded as to be injurious or dangerous to the health of the inmates, whether or not members of the same family, shall be a nuisance liable to be dealt with summarily under this Act.

This provision is similar to that contained in section 9 of the 48 & 49 Vict. c. 72, which applied to the metropolis. Its effect is to bring tents, vans, sheds, &c., used for human habitation within the nuisance sections of this Act (sections 1—14), as if they were "premises" within the meaning of section 2, sub-section (1), (a) and (e). It will, therefore, be the duty of the sanitary authority to include tents, vans, &c., in the inspection of the district, and to enforce the provisions of the Act as required by section 1, *ante*, p. 1.

(2) A sanitary authority may make bye-laws for promoting cleanliness in, and the habitable condition of tents, vans, sheds, and similar structures used for human habitation, and for preventing the spread of infectious disease by the persons inhabiting the same, and generally for the prevention of nuisances in connection with the same.

As to the making of these bye-laws, see section 114, *post*.

(3) Where any person duly authorised by a sanitary authority or by a justice has reasonable cause to suppose either—

- (a.) That any tent, van, shed, or similar structure used for human habitation is in such a state or so over-crowded as aforesaid, or that there is any contravention therein of any bye-law made under this section; or
- (b.) That there is in any such tent, van, shed, or structure any person suffering from a dangerous infectious disease,

he may enter by day such tent, van, shed, or structure, and examine the same and every part thereof in order to ascertain whether such tent, van, shed, or structure is in such a state or so over-crowded as aforesaid, or whether there is therein any such contravention, or a person suffering from a dangerous infectious disease, and the provisions of this Act with respect to the entry into any premises by an officer of the sanitary authority shall apply to the entry by any person duly authorised as aforesaid.

For the meaning of the expression "dangerous infectious disease," see section 58, *ante*, p. 117.

SECT. 95. "By day" means between 6 A.M. and 9 P.M. See section 141, *post*.

Note. The provisions of this Act with respect to the entry into premises are contained in section 115, *post*.

(4) Nothing in this section shall apply to any tent, van, shed, or structure erected or used by any portion of Her Majesty's naval or military forces.

Underground Rooms.

*Under-ground
Rooms.*

*Provisions
as to the
occupation*

*of under-
ground
rooms as
dwellings.*

96.—(1) Any underground room, (a) which was not let or occupied separately as a dwelling before the passing of this Act, (b) shall not be so let or occupied unless it possesses the following requisites; that is to say,

(a.) Unless the room is in every part thereof at least seven feet high measured from the floor to the ceiling, and has at least three feet of its height above the surface of the street or ground adjoining or nearest to the room: Provided that, if the width of the area hereinafter mentioned is not less than the height of the room from the floor to the said surface of the street or ground, the height of the room above such surface may be less than three feet, but it shall not in any case be less than one foot, and the width of the area need not in any case be more than six feet; (c)

(b.) Unless every wall of the room is constructed with a proper damp course, and, if in contact with the soil, is effectually secured against dampness from that soil; (d)

(c.) Unless there is outside of and adjoining the room and extending along the entire frontage thereof and upwards from six inches below the level of the floor thereof an open area properly paved at

least four feet wide in every part thereof : (e) SECT. 96.
Provided that in the area there may be placed
steps necessary for access to the room, and over
and across such area there may be steps neces-
sary for access to any building above the under-
ground room, if the steps in each case be so
placed as not to be over or across any external
window;

- (d.) Unless the said area and the soil immediately
below the room are effectually drained ; (f)
- (e.) Unless, if the room has a hollow floor, the space
beneath it is sufficiently ventilated to the outer
air ; (g)
- (f.) Unless any drain passing under the room is pro-
perly constructed of a gas-tight pipe ; (g)
- (g.) Unless the room is effectually secured against the
rising of any effluvia or exhalation ; (h)
- (h.) Unless there is appurtenant to the room the use
of a water-closet and a proper and sufficient
ash-pit ; (i)
- (i.) Unless the room is effectually ventilated ; (k)
- (j.) Unless the room has a fire-place with a proper
chimney or flue ;
- (k.) Unless the room has one or more windows opening
directly into the external air with a total area
clear of the sash frames equal to at least one-
tenth of the floor area of the room, and so con-
structed that one half at least of each window
of the room can be opened, and the opening in
each case extends to the top of the window.

(a) See the definition of an underground room in sub-section (9),
infra.

SECT. 96. (b) This section replaces 18 & 19 Vict. c. 120, s. 103, and 25 & 26

Note. Vict. c. 102, s. 62, but with many alterations. Under these sections certain conditions were required in the case of a room or cellar which was or had been occupied separately as a dwelling before the 14th August, 1855, and certain other conditions in the case of a room or cellar which was not, and had not been, so occupied before that date. Now, all underground rooms which were not let or occupied separately as dwellings before the 5th August, 1891, must fulfil the conditions imposed by this section; and even those which were so let or occupied before that date will be subject to these conditions after the 1st March, 1892, except in so far as a dispensation or modification may be granted under sub-section (3), *infra*.

As to what amounts to occupation as a dwelling, see sub-section (7), *infra*.

(c) In the case of a room let before 1855 there was no provision as to the height of the room; but in the case of a room let after 1855 as a dwelling the height had to be seven feet, of which *one* only had to be above the surface of the footway of the nearest street. The proviso in the text is quite new.

(d) This requirement is quite new.

(e) The width of the area was formerly three feet only, and in the case of a room let before 1855 it might be at the front, back, or side. The provision as to paving is new. The proviso to this clause is unchanged.

(f) There was no provision for drainage in the case of a room let before 1855, and the text requires more than was formerly required of a room let after that year, in that the area as well as the soil below the room must now be drained.

(g) This is a new requirement.

(h) This was formerly required in the case of a room let after 1855.

(i) This was formerly required in the case of a room let after 1855, except that under the old Act there might be a privy instead of a water-closet. For the definition of the expression "ashpit," see section 141, *post*.

(k) This requirement is new.

(l) The requirements were formerly as follows: In the case of a room let before 1855, it was necessary to have a window opening of at least nine superficial feet in area, which window opening had to be fitted with a frame filled in with glazed sashes, of which at the least $4\frac{1}{2}$ superficial feet had to be made to open for ventilation. In the case of a room not let before 1855 the room was required to have an

external glazed window of at least nine superficial feet in area clear of the frame, and made to open in such manner as was approved by the surveyor of the Metropolitan Board of Works (London County Council). SECT. 96.
Note.

(2) If any person lets or occupies, or continues to let, or knowingly suffers to be occupied, any underground room contrary to this enactment, he shall be liable to a fine not exceeding twenty shillings for every day during which the room continues to be so let or occupied.

As to what amounts to occupation and the evidence of it, see subsections (7) and (8), *supra*.

As to the recovery of this fine, see section 117, *post*.

(3) The foregoing provisions shall at the expiration of six months after the commencement of this Act extend to underground rooms let or occupied separately as dwellings before the passing of this Act, except that the sanitary authority, either by general regulations providing for classes of underground rooms, or on the application of the owner of such room in any particular case, may dispense with or modify any of the said requisites which involve the structural alteration of the building, if they are of opinion that they can properly do so having due regard to the fitness of the room for human habitation, to the house accommodation in the district, and to the sanitary condition of the inhabitants and to other circumstances, but any requisite which was required before the passing of this Act shall not be so dispensed with or modified.

The requisites required before the passing of this Act have been, to some extent, noticed, but it may be convenient here to state them in full.

“ Any room of a house, the surface of the floor of which room is more than three feet below the surface of the footway of the adjoining street, and any cellar where such room or cellar is or has been occupied

SECT. 96. separately as a dwelling, at or before the time of the passing of this
Note. Act, may continue to be so let or occupied if it possesses the following
 requisites ; that is to say :—

If there be an area not less than three feet wide in every part from six inches below the floor of such room or cellar to the surface or level of the ground adjoining to the front, back, or external side thereof, and extending the full length of such side ;

If such area to the extent of at least five feet long and two feet six inches wide, be in front of the window of such room or cellar, and be opened or covered only with open iron gratings ;

If there be in every such room or cellar an open fireplace, with proper flue therefrom ;

If there be a window opening of at least nine superficial feet in area, which window opening must be fitted with a frame filled in with glazed sashes, of which at the least four and a half superficial feet must be made to open for ventilation :

And no such room nor any cellar not so let or occupied as aforesaid at or before the time of the passing of this Act shall be so let or occupied, unless it possesses the following requisites ; that is to say,—

Unless the same be in every part thereof at least seven feet in height, measured from the floor to the ceiling thereof ;

Unless the same be at least one foot of its height above the surface of the footway of the street adjoining or nearest to the same ;

Unless there be outside of and adjoining the same room or cellar, and extending along the entire frontage thereof and upwards, from six inches below the level of the floor thereof to the surface of the said footway, an open area at least three feet wide in every part ;

Unless the same be effectually drained and secured against the rise of effluvia from any sewer or drain ;

Unless there be appurtenant to such room or cellar the use of a water-closet or privy, and an ashpit furnished with proper doors and coverings kept and provided according to the provisions of this Act ;

Unless the same have a fire-place with a proper chimney or flue ;

Unless the same have an external glazed window of at least nine superficial feet in area clear of the frame, and made to open in such manner as is approved by the surveyor of the Metropolitan Board of Works :

Provided always, that in any area adjoining a room or cellar there may be placed steps necessary for access to such room or cellar, and over or across any such area there may be steps necessary for access to any building above the room or cellar to which such area adjoins, if the steps in such respective cases be so placed as not to be over or across any such external window."

Note.

(4) The dispensations and modifications may be allowed either absolutely or for a limited time, and may be revoked and varied by the sanitary authority, and shall be recorded together with the reasons in the minutes of the sanitary authority.

(5) If the owner of any room feels aggrieved by a dispensation or modification not being allowed as regards that room, he may appeal to the Local Government Board, and that Board may refuse the dispensation or modification, or allow it wholly or partly, as if they were the sanitary authority. Such allowance may be revoked or varied by the Board, but not by the sanitary authority.

If the Local Government Board on appeal allow any dispensation or modification they alone can revoke or vary it.

(6) Where two or more underground rooms are occupied together, and are not occupied in conjunction with any other room or rooms on any other floor of the same house, each of them shall be deemed to be separately occupied as a dwelling within the meaning of this section.

It must be remembered that it is only when an underground room is *separately* occupied as a dwelling that the Act applies. Therefore, if a room is occupied underground in conjunction with a room or rooms on a higher floor there is no separate occupation of the former room. But if two or more underground rooms are occupied together, each is to be deemed to be separately occupied unless they are occupied in conjunction with rooms on a higher floor.

SECT. 96. (7) Every underground room in which a person passes the night shall be deemed to be occupied as a dwelling within the meaning of this section ; and evidence giving rise to a probable presumption that some person passes the night in an underground room shall be evidence, until the contrary is proved, that such has been the case.

This provision is taken from 18 & 19 Vict. c. 120, s. 103, and 25 & 26 Vict. c. 102, s. 62, without change.

(8) Where it is shown that any person uses an underground room as a sleeping place, it shall, in any proceeding under this section, lie on the defendant to show that the room is not separately occupied as a dwelling.

The occupation of the underground room as a dwelling is not an offence unless the room is separately occupied ; but it lies on the defendant to show that it is not separately occupied if it is shown to be used as a sleeping place.

(9) For the purpose of this section the expression "underground room" includes any room of a house the surface of the floor of which room is more than three feet below the surface of the footway of the adjoining street, or of the ground adjoining or nearest to the room.

This definition is new.

Enforee-
ment of
provisions
as to
under-
ground
rooms.

97.—(1) Any officer of a sanitary authority appointed or determined by that authority for the purpose shall, without any fee or reward, report to the sanitary authority at such times and in such manner as the sanitary authority may order all cases in which underground rooms are occupied contrary to this Act in the district of such authority.

This duty formerly devolved upon the district surveyor under 18 & 19

Vict. c. 120, s. 103 ; 25 & 26 Vict. c. 102, s. 62. Under these enactments he had to report in June and December every year, and at all other times when required. SECT. 97.
Note.

The words "appointed and determined" are unusual.

(2) Any such officer or any other person having reasonable grounds for believing that any underground room is occupied in contravention of this Act may enter and inspect the same at any hour by day; and if admission is refused to any person other than an officer of the sanitary authority the like warrant may be granted by a justice under this Act as in case of refusal to admit any such officer.

"By day" means between 6 A.M. and 9 P.M. See section 141, *post*. If it is desired to enter at any other hour a justices' warrant must be obtained. See the next sub-section.

As to the warrant of a justice to admit an officer, see section 115, *post*.

(3) A warrant of a justice authorising an entry into an underground room may authorise the entry between any hours specified in the warrant.

See the note to the preceding sub-section.

98. Where two convictions for an offence relating to the occupation of an underground room as a dwelling have taken place within a period of three months (whether the persons convicted were or were not the same), a petty sessional court may direct the closing of the underground room for such period as the court may deem necessary, or may empower the sanitary authority of the district permanently to close the same, in such manner as they think fit, at their own cost.

This section is taken from 29 & 30 Vict. c. 90, s. 36. It is presumed that the order will only prohibit the use of the room as a dwelling-place, not its use for any other purpose.

A similar provision is contained in section 75 of the Public Health Act, 1875.

SECT. 99.

Autho-
rities for
Execution of
Act.
 Definition of sanitary authority.

18 & 19

Viet. c. 120.

48 & 49

Viet. c. 33.

50 & 51

Viet. c. 17.

Authorities for Execution of Act.

99.—(1) Subject to the provisions of this Act, the sanitary authority for the execution of this Act (in this Act referred to as “the sanitary authority”) shall be as follows; (namely,) (a.) In the City of London the Commissioners of Sewers; and

(b.) In each of the parishes mentioned in Schedule (A.) to the Metropolis Management Act, 1855, as amended by the Metropolis Management Amendment Act, 1885, and the Metropolis Management (Battersea and Westminster) Act, 1887, other than Woolwich, the vestry of the parish; and

(c.) In each of the districts mentioned in Schedule (B.) to the same Act, as so amended, the district board for the district; and

(d.) In the parish of Woolwich, the local board of health; and

(e.) In any place mentioned in Schedule (C.) to the Metropolis Management Act, 1855, the board of guardians for such place or for any parish or poor law union of which it forms part, or, if there is no such board of guardians, the overseers of the poor for such place, or for the parish in which it is situate, and the said guardians and overseers respectively shall have the same powers for the purposes of this Act as a vestry or district board have under this Act, and their expenses shall be defrayed in the same manner as the expenses of the execution of the

Acts relating to the relief of the poor are defrayed SECT. 99.
in the said place.

The following are the parishes mentioned in Schedule (A.) to the 18 & 19 Viet. c. 120, as amended by 48 & 49 Viet. c. 33, and 50 & 51 Viet. c. 17 :—

Saint Marylebone.	Saint George-the-Martyr, Southwark.
Saint Pancras.	Bermondsey.
Lambeth.	Saint George-in-the-East.
Saint George, Hanover Square.	Saint Martin-in-the-Fields.
Islington, Saint Mary.	Hamlet of Mile End Old Town.
Shoreditch, Saint Leonard.	Rotherhithe.
Paddington.	Saint John, Hampstead.
Saint Matthew, Bethnal Green.	Fulham.
Saint Mary, Newington, Surrey.	Hammersmith.
Camberwell.	Saint Mary, Battersea (excluding Penge).
St. James, Westminster.	Saint Margaret, Westminster, and Saint John-the-Evangelist, Westminster.
Saint James and Saint John, Clerkenwell.	
Chelsea.	
Kensington, St. Mary Abbott.	
Saint Luke, Middlesex.	

The following are the districts mentioned in Schedule (B.) as amended by the same Acts :—

Whitechapel.	Limehouse.
Greenwich.	Poplar.
Wandsworth.	Saint Saviour.
Hackney.	Plumstead.
St. Giles.	Lewisham.
Holborn.	Saint Olave.
Strand.	

Schedule (C.) comprises the following places :—

The Close of the Collegiate Church of St. Peter.	Lincoln's Inn.
The Charter-House.	Gray's Inn.
Inner Temple.	Staple Inn.
Middle Temple.	Furnival's Inn.

The parish of Woolwich was constituted a district under the Public Health Act, 1848 (11 & 12 Viet. c. 63), the provisional order being

SECT. 99. confirmed by 15 & 16 Vict. e. 69. It is included in the list of parishes enumerated in Schedule (A.) of the Metropolis Management Act, 1855 (18 & 19 Vict. c. 120), but by section 238 of that Act, its provisions apply in Woolwich to a very limited extent. See further as to Woolwich, the note to section 102, *post*, and the Second Schedule, *post*.

Note. (2) The area within which this Act is executed by any sanitary authority is in this Act referred to as the district of that authority.

See the note to the preceding sub-section.

(3) The purposes for which a committee of a vestry or district board may be appointed under the Metropolis Management Act, 1855, and the Acts amending the same, shall include the purposes of this Act, and the provisions of those Acts with respect to committees shall apply accordingly.

See the notes to the next sub-section.

(4) Where a sanitary authority appoint a committee for the purposes of this Act, that committee, subject to the terms of their appointment, may serve and receive notices, take proceedings, and empower any officer of the authority to make complaints and take proceedings in their behalf, and otherwise to execute this Act.

This is a new and useful provision. It was held in *St. Leonard, Shoreditch (Vestry of), v. Holmes*, 50 J. P. 132, that an officer of a sanitary authority could not himself give a notice which the Act required to be given by the sanitary authority without their previous sanction or direction. Such a direction could only be given at a meeting of the authority, and this might involve much loss of time. The text now enables the sanitary authority to appoint a committee who may serve and receive notices, &c., in their behalf, and empower an officer to institute any proceedings. But it will still apparently be necessary that the officer should have the previous direction of the committee.

The power of a sanitary committee to appoint a committee is contained in 18 & 19 Vict. e. 120, ss. 58, 59. Under these sections they

may appoint a committee for any purposes which, in their discretion, would be better regulated and managed by means of such committee, and at any meeting to continue, alter, or discontinue such committee; but the acts of such committee must be submitted to the authority for their approval. It is not quite clear whether this approval is necessary in the case of a committee appointed for the purposes of this Act.

Note.

Where a committee appointed under an authority given by the Land Drainage Act, 1881, delegated its duties to a committee of three members, it was held that every act must be the joint act of the three, and that it was not competent for them to apportion their duties among themselves: *Cook v. Ward*, 2 C. P. D. 255; 26 L. T. (N.S.) 893; 25 W. R. 593; 41 J. P. 439. It must not be taken, however, that this case authorises a committee appointed for purposes of this Act to delegate its powers to a sub-committee. It is here cited to show that the committee must act as a body, not by individual members.

(5) A sanitary authority may acquire and hold land for the purposes of their duties without any licence in mortmain.

A similar provision is contained in section 7 of the Public Health Act, 1875. Without it lands could not be acquired, and held for purposes of this Act without a license, under 51 & 52 Vict. c. 42, s. 1.

100. The county council, on it being proved to their satisfaction that any sanitary authority have made default in doing their duty under this Act with respect to the removal of any nuisance, the institution of any proceedings, or the enforcement of any bye-law, may institute any proceeding and do any act which the authority might have instituted or done for that purpose, and shall be entitled to recover from the sanitary authority in default all such expenses in and about the said proceeding or act as the county council incur, and are not recovered from any other person, and have not been incurred in any unsuccessful proceeding.

This is a new provision.

The county council are the London County Council. See section 141, *post.*

SECT. 100. The sanction of the Local Government Board is not required under section 117, sub-section (3), *post*, for the recovery of these expenses.

Note. The expenses will apparently be recoverable in a summary manner under section 117, sub-section (1), and if under 50*l.* in the county court under section 117, sub-section (2).

This section does not extend to any default of the Commissioners of Sewers of the City of London. See section 133, *post*.

Proceedings on
complaint
to Local
Govern-
ment
Board of
default of
sanitary
authority.

101.—(1) Where complaint is made by the county council to the Local Government Board that a sanitary authority have made default in executing or enforcing any provisions which it is their duty to execute or enforce of this Act, or of any bye-law made in pursuance thereof, the Local Government Board, if satisfied after due inquiry that the authority have been guilty of the alleged default, and that the complaint cannot be remedied under the other provisions of this Act, shall make an order limiting a time for the performance of the duty of such authority in the matter of such complaint. If such duty is not performed by the time limited in the order, the order may be enforced by writ of *mandamus*, or the Local Government Board may appoint the county council to perform such duty.

A somewhat similar provision is contained in section 299 of the Public Health Act, 1875. But under the provision in the text the complaint can only be made by the county council. And the order cannot be made if the complaint cannot be remedied under the other provisions of this Act, *e.g.*, if the county council can themselves take proceedings under the last preceding section.

The writ of *mandamus* may apparently be issued, notwithstanding the alternative remedy given by the section to appoint the county council to perform the duty in question.

It should be mentioned that section 135 contains special proceedings relating to complaints to the Local Government Board in respect of default on the part of the Commissioners of Sewers of the City of London.

(2) Where such appointment is made, the county council shall, for the purpose of the execution of their

duties under the said appointment, have all the powers SECT. 101. of the defaulting sanitary authority, and all expenses incurred by the county council in the execution of the said duties, together with the costs of the previous proceedings, so far as not recovered from any other person, shall be a debt from the sanitary authority in default to the county council, and shall be paid by the sanitary authority out of any moneys or rate applicable to the payment of the expenses of performing the duty in which they have made default.

The county council will simply take the place of the sanitary authority in executing the duty of the latter, and the expenses will be payable by the sanitary authority out of the funds mentioned in section 103, *post.*

The expenses will be recoverable by action, or in manner provided by the next sub-section.

(3) For the purpose of recovering such debt the county council, without prejudice to any other power of recovery, shall have the same power of levying the amount by a rate, and of requiring officers of the defaulting authority to pay over money in their hands, as the defaulting authority would have in the case of expenses legally payable out of a rate raised by that authority.

The county council will, therefore, be able to raise the amount payable to them as if they were the sanitary authority, and providing for payment of expenses by means of the rates mentioned in section 103, *post.*

The power of a district board or vestry to require officers to pay over money in their hands is conferred by 18 & 19 Vict. c. 120, s. 65.

(4) The county council shall pay any surplus of the rate so levied to or to the order of the defaulting authority.

(5) If any loan is required to be raised for the purpose of the execution of their duties under the said appoint-

SECT. 101. — ment, the county council with the consent of the Local Government Board may raise the same, and may for that purpose borrow the required sum in the name of the defaulting authority for the same period, on the same security, and on the same terms as that authority might have borrowed, and the principal and interest of such loan shall be a debt due from the defaulting authority, and shall be secured and may be recovered in like manner as if the loan had been borrowed by that authority.

As to the power of a sanitary authority, and the purposes for which they may borrow, see section 105, *post*.

(6) The surplus (if any) of any loan not applied for the purpose for which it is raised shall, after payment of the expenses of raising the same, be paid to or to the order of the defaulting authority, and be applied as if it were the surplus of a loan raised by that authority.

See as to this the note to section 105, *post*.

Application of
Public
Health
Acts to
Woolwich.

102.—(1) The provisions of the Public Health Acts, which are set out in the Second Schedule to this Act, except so far as they are superseded by this Act, shall extend to the parish of Woolwich, and to the local board of health thereof, in like manner as they apply to any urban sanitary district elsewhere, and the sanitary authority thereof, without prejudice to the existing effect of the Metropolis Management Act, 1855, and the Acts amending the same, or to the powers, duties, and liabilities of the county council and the local board of health of Woolwich under the latter Acts.

Woolwich was created a local board district by provisional order, confirmed by 15 & 16 Vict. c. 69, ss. 1, 2, 4. By 18 & 19 Vict. c. 120, s. 238, it was brought within the jurisdiction of the Metropolitan Board of Works for certain purposes, and for these purposes it is still part of the metropolis, and subject to the jurisdiction of the London County Council. The Public Health Act, 1875, did not apply to the metropolis,

which, as defined by section 4 of that Act, included Woolwich. Now, SECT. 102, however, the Act will apply to Woolwich to the extent mentioned in the Second Schedule, *post.* Note.

(2) The Woolwich Local Board may borrow for the purposes of this Act in like manner as if those purposes were purposes of the Public Health Acts.

The sections of the Public Health Act, 1875, relating to borrowing are now extended to Woolwich. See the Second Schedule, *post.*

103. The expenses incurred by sanitary authorities in London under this Act shall, save as otherwise in this Act mentioned, be defrayed as follows; (namely,) Expenses of execution of Act.

In the case of the Commissioners of Sewers, out of their sewer rate and consolidated rate, or either of such rates:

In the case of any vestry or district board, out of their general rate:

In the case of the local board of health of Woolwich, out of the district fund or general district rate.

The Commissioners of Sewers are appointed under 11 & 12 Vict. c. clxiii. by the common council of the City of London. Their duties under that Act consist in the making, &c., of sewers, drains, and vaults, and of paving, cleansing, lighting, and improving the several streets within the city, and the enforcing of various sanitary provisions relating to drains, closets, ash-pits, &c. They have power under the act to make a sewer rate for the purpose of constructing, altering, repairing, and cleansing the sewers within the city, and for otherwise maintaining the sewerage and drainage, such rate not to exceed 4*d.* in the pound in any one year; and a consolidated rate not to exceed 1*s.* 6*d.* in the pound in any year for general purposes of the Act. They are also empowered to borrow on the credit of either of these rates (sections 207, 208). This Act was amended by 14 & 15 Vict. c. xci., and 38 & 39 Vict. c. iv. The latter contains provisions for the borrowing of money by the commissioners.

Vestries and district boards raise the expenses by precepts addressed to the overseers, except in some cases where the vestry make the rates: 18 & 19 Vict. c. 120, ss. 158, 167. The general rate above referred to

SECT. 103. is the rate made for general purposes of the Metropolis Management
 Note. Acts, as distinguished from the sewer rate and lighting rate.

The provisions of the Public Health Act, 1875, as to the making of rates being now extended to Woolwich (see the preceding section, and Schedule 2, *post*), the expenses of this Act in Woolwich will be defrayed out of the general district fund and rate, under sections 210, 211, of that Act.

Expenses
 of Metro-
 politan
 Asylum
 Board.

104.—(1) All expenses incurred by the Metropolitan Asylum Managers in the execution of the provisions of this Act relating to the provision and maintenance of carriages, buildings, and horses, and the conveyance in such carriages of persons suffering from any dangerous infectious disease shall to such extent as the Local Government Board may sanction be defrayed out of the Metropolitan Common Poor Fund.

As to the Metropolitan Common Poor Fund, see the note to section 80, *ante*, p. 141.

30 & 31
 Vict. e. 6.

(2) Save as aforesaid, all expenses incurred by the said managers in the execution of this Act shall so far as they are not recovered from guardians in pursuance of this Act be defrayed in the same manner as the expenses mentioned in section thirty-one of the Metropolitan Poor Act, 1867, are to be defrayed under that section ; and shall be raised and be recoverable (in the same manner as expenses under that Act.

Expenses under 30 Vict. e. 6, s. 31, are defrayed by contributions from the unions and parishes forming the district. These contributions are to be assessed on each parish and district according to its rateable value (section 55).

(3) The provision of vessels and buildings in pursuance of this Act shall be purposes for which the Metropolitan Asylum Managers may borrow in pursuance of the Metropolitan Poor Act, 1867, and any Acts amending the same.

This sub-section states in general terms the effect of a number of

separate enactments : 42 & 43 Viet. c. 54, s. 16 ; 46 & 47 Viet. c. 35, SECT. 104. s. 4 ; 47 & 48 Viet. c. 60, s. 2 ; 52 & 53 Viet. c. 56, s. 7.

Note.

105.—(1) The provision of hospitals and of mortuaries under this Act, and the purposes of the epidemic regulations under this Act, shall be purposes for which vestries and district boards are authorised to borrow. Power of vestries and district boards to borrow.

This sub-section replaces 46 & 47 Viet. c. 35, s. 5, and 53 & 54 Viet. c. 60, s. 24.

As to the provision of hospitals, see section 75, *ante*. As to the epidemic regulations, see section 82, *ante*; and as to the provision of mortuaries, see section 88, *ante*.

(2) A sanitary authority, with the consent of the Local Government Board, may borrow for the purpose of providing, as required or authorised by this Act—

- (a.) Sanitary conveniences, lavatories, and ashpits, and
- (b.) Premises, apparatus, carriages, and vessels for the disinfection, destruction, and removal of infected articles, and
- (c.) A building for *post-mortem* examinations and accommodation for the holding of inquests.

It should be observed that the consent of the Local Government Board is required for a loan for any of these purposes. The importance of this appears by the next sub-section.

As to the provision of sanitary conveniences, lavatories, and ashpits, see section 43, *ante*, p. 74. As to premises, &c., for disinfection, see section 59, *ante*, p. 118. As to a *post-mortem* building, see section 90. But a place for holding inquests is provided by the county council, under section 92, not by the sanitary authority, who cannot, therefore, require to borrow in order to provide it.

(3) The purposes for which a sanitary authority are authorised under this Act to borrow shall be purposes for which that authority may borrow under the Acts relating to the execution of the other duties of that

SECT. 105. authority, and, where the consent of the Local Government Board is required and given to any such loan, the consent of any other authority shall not be required.

As to the powers of the Commissioners of Sewers to borrow, see the Acts cited in the notes to section 103, *ante*, p. 173. The consent of a superior authority is not required for borrowing by the commissioners except when the loan is for any of the purposes mentioned in the preceding sub-section.

The powers of borrowing conferred on a district board or vestry are given by 18 & 19 Vict. c. 120, s. 183. Under that section they can borrow for the purpose of defraying expenses incurred under the Metropolis Management Acts, with the sanction of the London County Council. But this sanction will not be required if the loan is for the purposes mentioned in the preceding sub-section, and the consent of the Local Government Board has been obtained.

The Woolwich Local Board will in future borrow under the Public Health Act, 1875. See section 102 and Schedule 2, *post*; and the consent of the Local Government Board must be obtained for every loan.

Appoint-
ment of
medical
officers
of health.

106.—(1) Every sanitary authority shall appoint one or more medical officers of health for their district.

As to the qualification, appointment, duties, salary, and tenure of office of a medical officer of health, see section 108, *post*. See also section 139, *post*, as to existing officers.

(2) The same person may, with the sanction of the Local Government Board, be appointed medical officer of health for two or more districts, by the sanitary authorities of such districts; and the Local Government Board shall prescribe the mode of such appointment and the proportions in which the expenses of such appointment and the salary and charges of such officer shall be borne by such authorities.

Where a person holds office for two districts, he must live within a mile of the boundary of each, unless he obtains the consent of the Local Government Board under the next sub-section.

(3) Every person appointed or re-appointed after the commencement of this Act as medical officer of health of

a district shall (except during the two months next after SECT. 106, the time of his appointment, or except in cases allowed by the Local Government Board) reside in such district or within one mile of the boundary thereof, and, if while not so residing as required by this enactment he assumes to act or receives any remuneration as such medical officer of health, he shall cease to hold the office.

This sub-section will not apply to a medical officer who was in office when the Act passed, unless after that date he is re-appointed.

(4) A medical officer of health may exercise any of the powers with which a sanitary inspector is invested.

A medical officer of health has not only the powers conferred upon him by the Act in express terms, but, in addition, those conferred on the sanitary inspector.

(5) The annual report of a medical officer of health to the sanitary authority shall be appended to the annual report of the sanitary authority.

Every district board and vestry is required to make an annual report in the month of June in every year, and to send a copy to the London County Council. To this annual report must be appended the annual report of the medical officer. This sub-section replaces the repealed part of 18 & 19 Vict. c. 120, s. 198, and 25 & 26 Vict. c. 102, s. 43.

107.—(1) Every sanitary authority shall appoint an adequate number of fit and proper persons as sanitary inspectors, and may distribute among them the duties to be performed by sanitary inspectors, and every such inspector shall be a person qualified and competent by his knowledge and experience to perform the duties of his office.

This sub-section is taken from 18 & 19 Vict. c. 120, s. 133, and 23 & 24 Vict. c. 77, s. 9.

As to the qualification, appointment, duties, salary, and tenure of office of a sanitary inspector, see the next section. See especially sub-sections (2), (d) of that section as to the qualification of a sanitary inspector appointed after the 1st January, 1895.

SECT. 107. (2) Where the Local Government Board, on a representation from the county council, and after local inquiry, are satisfied that any sanitary authority have failed to appoint a sufficient number of sanitary inspectors, the Board may order the authority to appoint such number of additional sanitary inspectors and to allow them such remuneration as the order directs, and the sanitary authority shall comply with the order.

As to the holding of local inquiries, see section 129, *post*.

No provision is made for enforcing the order of the Local Government Board. This may apparently be done by *mandamus*.

(3) The sanitary inspectors shall report to the sanitary authority the existence of any nuisances; and the sanitary authority shall cause a book to be kept in which shall be entered all complaints made of any infringement of the provisions of this Act or of any bye-laws made thereunder, or of nuisances; and every such inspector shall forthwith inquire into the truth or otherwise of such complaints, and report upon the same, and such report shall be laid before the sanitary authority at their next meeting, and together with the order of the sanitary authority thereon shall be entered in a book, which shall be kept at their office, and shall be open at all reasonable times to the inspection of any inhabitant of the district, and of any officer either generally or specially authorised for the purpose by the county council; and it shall be the duty of such inspector, subject to the direction of the sanitary authority, or of a committee thereof, to make complaints before justices and take legal proceedings for the punishment of any person for any offence under this Act or any such bye-laws.

This sub-section is, in substance, a re-enactment of 18 & 19 Vict. c. 120, s. 133. The provision for inspection of the book by officers of the county council is new, as also is that relating to the direction of a committee under section 99, *ante*, p. 168.

108.—(1) Subject to the provisions of this Act as to SECT. 108, existing officers, the Local Government Board shall have the same powers as they have in the case of a district medical officer of a poor law union with regard to the qualification, appointment, duties, salary, and tenure of office of every medical officer of health and sanitary inspector; and one-half of the salary of every such medical officer and sanitary inspector shall be paid by the county council out of the Exchequer Contribution Account in accordance with section twenty-four of the Local Government Act, 1888, and that section shall be construed as if in sub-section two thereof the reference to the Public Health Act, 1875, included a reference to this Act.

51 & 52
Viet. c. 41.

Provisions
as to
medical
officers
and sanita-
tary in-
spectors.

The provisions of this Act as to existing officers are contained in section 139, *post.*

Under 4 & 5 Will. 4, c. 76, s. 46, the Local Government Board have power to define and specify the qualification, duties, salary, appointment and tenure of office of district medical officer, and they have done so by General Orders, dated 25th May, 1857, and 10th December, 1859. See Macmorran and Lushington's "Poor Law General Orders," pp. 312, 326. A provision similar to that in the text is contained in the Public Health Act, 1875, as amended by the Local Government Act, 1888, section 24, sub-section (3).

Formerly, when the qualification, &c., of a medical officer or inspector of nuisances were prescribed by the Local Government Board, one-half of his salary was paid out of moneys provided by Parliament. Since the Local Government Act, 1888, the Government grant has ceased, and by section 24 of that Act, the county council are required to pay out of the Exchequer Contribution Account, one-half of the salary of every medical officer and inspector of nuisances, when his qualification, &c., are in accordance with the regulations of the Local Government Act made by order under this Act.

The full text of section 24 of the Local Government Act, 1888, as applied by the above sub-section is as follows:—

"Whereas certain grants heretofore made out of the Exchequer in aid of local rates (in this Act referred to as local grants) will, by reason of the duties on the local taxation licenses, and the probate duty grant being by this Act made payable to local authorities, cease, it is, therefore, hereby enacted as follows:—

SECT. 108. (1) So much of any enactment as requires or authorises payment out of the Exchequer of any local grant in substitution for which the county council is required by this Act to make any payment is hereby repealed as from the 31st day of March next, after the passing of this Act (1889) without prejudice to any right accrued before that day.

Note. (2) In substitution for local grants, the council of each county shall from time to time as from the said day pay out of the county fund and charge to the Exchequer Contribution Account the following sums, that is to say—

* * * * *

(c) They shall pay to every local authority, for any area wholly or partly in the county, by whom a medical officer of health or inspector of nuisances is paid, one-half of the salary of such officer, where his qualification, appointment, salary, and tenure of office are in accordance with the regulations made by order under the Public Health (London) Act, 1891, or any Act repealed by that Act, but if the Local Government Board certify to the council that such medical officer has failed to send to the Local Government Board such report and returns as are for the time being required by the regulations respecting the duties of such officer made by order of the Board under any of the said Acts, a sum equal to such half of the salary shall be forfeited to the Crown, and the council shall pay the same into Her Majesty's Exchequer and not to the said local authority."

(2) Provided that—

(a.) A medical officer of health shall be legally qualified for the practice of medicine, surgery, and midwifery, and also either be registered in the Medical Register as the holder of a diploma in sanitary science, public health, or State medicine under section twenty-one of the Medical Act, 1886, or have been during three consecutive years preceding the year one thousand eight hundred and ninety-two a medical officer of a district or combination of districts in London or elsewhere with a population according to the last published census of not

less than twenty thousand, or have before the SECT. 108. passing of the Local Government Act, 1888, been for not less than three years a medical officer or inspector of the Local Government Board; and

(b.) A medical officer of health shall be removable by the sanitary authority with the consent of the Local Government Board, or by that board, and not otherwise:

Provided that the Local Government Board shall take into consideration every representation made by the sanitary authority for the removal of any medical officer, whether based on the general interests of the district, on the conduct of such officer, or on any other ground; and

(c.) Any such medical officer shall not be appointed for a limited period only; and

(d.) A sanitary inspector appointed after the first day of January one thousand eight hundred and ninety-five shall be holder of a certificate of such body as the Local Government Board may from time to time approve, that he has by examination shown himself competent for such office, or shall have been, during three consecutive years preceding the year one thousand eight hundred and ninety-five, a sanitary inspector or inspector of nuisances of a district in London, or of an urban sanitary district out of London containing according to the last published census a population of not less than twenty thousand inhabitants.

Clause (a.) contains substantially the same provisions as section 18, sub-section (2), of the Local Government Act, 1888, with regard to the

SECT. 108. qualification of the medical officer of a county appointed after the 1st January, 1892.

Note.

The Medical Act, 1886 (49 & 50 Vict. c. 48), s. 21, provides that every registered medical practitioner to whom a diploma for proficiency in sanitary science, public health, or State medicine, has, after special examination, been granted by any college or faculty of physicians or surgeons, or university, in the United Kingdom, or by any such bodies acting in combination, shall, if such diploma appears to the Privy Council, or to the General Council, to deserve recognition in the Medical Register, be entitled, on payment of such fee as the General Council may appoint, to have such diploma entered in the said register, in addition to any other diploma or diplomas in respect of which he is registered.

The medical officer of health of the Local Government Board is appointed under 21 & 22 Vict. c. 97, s. 4; 34 & 35 Vict. c. 70. Inspectors are appointed under 10 & 11 Vict. c. 109, s. 19, and 34 & 35 Vict. c. 70, s. 2.

The provision as to the qualification of sanitary inspectors is new.

Temporary arrangement for duties of medical officer or sanitary inspector.

109. A sanitary authority, where occasion requires, may, with the sanction of the Local Government Board, make any temporary arrangement for the performance of all or any of the duties of a medical officer of health or sanitary inspector, and any person appointed by virtue of any such arrangement to perform those duties, or any of them, shall, subject to the terms of his appointment, have all the powers, duties, and liabilities of a medical officer of health or sanitary inspector as the case may be.

This provision is new. The temporary officer must apparently be qualified as in the last preceding section mentioned. Compare section 79 of the Housing of the Working Classes Act, 1890 (53 & 54 Vict. c. 70).

Jurisdiction as to ships.

110.—(1) For the purposes of this Act any vessel lying in any river or other water within the district of a sanitary authority shall (subject to the provisions of this Act with respect to the port sanitary authority of the

port of Loudon) be subject to the jurisdiction of that ~~SECT.~~ 110. authority in the same manner as if it were a house within such district.

This section is taken from 29 & 30 Viet. c. 90, ss. 30, 32.

As to the port sanitary authority of the port of Loudon, section 111, *post.*

(2) The master of any such vessel shall be deemed for the purposes of this Act to be the occupier of such vessel.

The word "occupier" has been retained although the term "master" as defined by section 141, *post*, has been substituted throughout this Act.

(3) This section shall not apply to any vessel under the command or charge of any officer bearing Her Majesty's commission, or to any vessel belonging to any foreign government.

Port Sanitary Authority of Port of London.

111. The mayor, commonalty, and citizens of the City of London shall continue to be the port sanitary authority of the port of London, as established for the purposes of the laws relating to the customs of the United Kingdom, and shall pay out of their corporate funds all their expenses as such port sanitary authority.

*Port
Sanitary
Authority
of Port of
London.*
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London.*

This section is taken from 35 & 36 Viet. c. 79, s. 20, and 38 & 39 Viet. c. 55, s. 291.

The Customs Laws Consolidation Acts, 1876 (39 & 40 Viet. c. 36), ss. 11—16, provide that the Commissioners of the Treasury may by their warrant appoint any port in the United Kingdom and declare the limits thereof, and may annul the limits of any port already appointed or to be thereafter set out, and may declare the same to be no longer a port: Provided that such alterations or variations in limits shall not affect any lawful rights or privileges co-extensive with such pre-existing limits (irrespective of matters relating to Her Majesty's

SECT. 111. Customs) granted to any person or body by any Act of Parliament, &c., but they shall be deemed to be and remain the same for the purposes of such Act as if no such alteration or variation had been made. The Commissioners of the Treasury may from time to time revoke or alter any warrant made by them.

Note.
Powers
of port
sanitary
authority
of port of
London.
38 & 39
Vict. c. 55.

112.—(1) The Local Government Board may by order assign to the port sanitary authority of the port of London any powers, rights, duties, capacities, liabilities, or obligations of a sanitary authority under this Act, or of a sanitary authority under the Public Health Act, 1875, and any Act extending or amending the same respectively, with such modifications and additions (if any) as may appear to the Board to be required, and the order may extend to the said port a bye-law made under this Act otherwise than by the port sanitary authority, and any such bye-law until so extended shall not extend to the said port; and the said port sanitary authority shall have the powers, rights, duties, capacities, liabilities, and obligations assigned by such order in and over all waters within the limits of the said port, and also in and over such districts or parts of districts of riparian authorities as may be specified in any such order, and the order may extend this Act, and any part thereof, and any bye-law made thereunder, to such waters and districts and parts of districts when not situate in London.

See the definition of riparian authorities in sub-section (4), *infra*.

(2) The said port sanitary authority may acquire and hold land for the purposes of their constitution without any licence in mortmain.

See the note to section 99, *ante*, p. 169.

(3) The said port sanitary authority may, with the sanction of the Local Government Board, delegate to any riparian authority the exercise of any powers conferred on the port sanitary authority by the order of the

Board, but except in so far as ~~such delegation extends~~ ^{Sec. 112.} no other authority shall exercise any powers conferred on such port sanitary authority ~~by the order of the Board~~ ^{sec.} within the limits of the port of London.

As to riparian authorities, see the next sub-section.

A similar provision is contained in section 289 of the Public Health Act, 1875.

(4) "Riparian authority" in this section means any sanitary authority under this Act and any sanitary authority under the Public Health Act, 1875, whose district or part of whose district forms part of or abuts on any part of the said port, and any conservators, commissioners, or other persons having authority in or over any part of the said port.

The port of London extends beyond the county of London.

As to sanitary authorities under the Act, see section 99, *ante*, p. 166. Sanitary authorities under the Public Health Act, 1875, are the several urban and rural sanitary authorities.

Application of Public Health Acts as to Cholera, &c.

*Application of
Public
Health
Acts as to
Cholera,
&c.*

113. The sections of the Public Health Acts (relating to regulations and orders of the Local Government Board with respect to cholera, or other epidemic, endemic, or infectious diseases) set out in the First Schedule to this Act, shall extend to London, and shall apply in like manner as if a sanitary authority under this Act were a local authority within the meaning of those sections.

*Powers
of Local
Govern-
ment
Board
as to
epidemic
diseases.*

See these sections and the notes thereto in the Second Schedule, *post.*

Bye-Laws.

114. All bye-laws made by the county council or *Bye-laws.* by any sanitary authority under this Act shall be made subject and according to the provisions with respect to .

SECT. 114. bye-laws contained in sections one hundred and eighty-two to one hundred and eighty-six of the Public Health Act, 1875, and set forth in the First Schedule to this Act; and those sections shall apply in like manner as if the county council or sanitary authority were a local authority :

38 & 39
Vict. c. 55.

Provided that the county council, in making any bye-laws which will have to be observed and enforced by any sanitary authority, shall consider any representations made to the council by that authority, and not less than two months before applying to the Local Government Board for the confirmation of any such bye-laws shall send a copy of the proposed bye-laws to every such authority.

The incorporated provisions of the Public Health Act, 1875, are set out in Schedule 2, *post*.

The application of the proviso has been noticed under the several sections under which the county council are to make bye-laws to be enforced by the sanitary authorities.

Legal proceedings.
General provisions as to powers of entry.

Legal Proceedings.

115.—(1) Where a sanitary authority have, by virtue of this Act, power to examine or enter any premises, whether a building, vessel, tent, van, shed, structure, or place open or enclosed, they may examine or enter by any members of the authority, or by any officers or persons authorised by them, either generally or in any particular case.

The sections under which power of entry is given by this Act are ss. 5 (9), 10, 12 (3), 20 (7), 23 (6), 26 (2), 27 (2), 36 (3), 39 (1), 40 (2), 42 (2), 47 (1), 60 (3).

The authority to enter may be a general authority to enter as occasion may require, or a particular authority applicable only to a given case.

(2) Where a sanitary authority, or their officers, or any persons acting under such authority, or under any of

their officers, have by virtue of any enactment in this SECT. 115. Act, a right to enter any premises, whether a building, vessel, tent, van, shed, structure, or place open or enclosed, then, subject to any special provisions contained in such enactment, the following provisions shall apply, that is to say—

- (a.) The person so claiming the right to enter shall, if required, produce some written document, properly authenticated on the part of the sanitary authority, showing the right of the person producing the same to enter;
- (b.) Any person refusing or failing to admit any person who is authorised and claims to enter the premises shall if—
 - (i.) The entry is for the purpose of carrying into effect an order of a court of summary jurisdiction, and either is stated in the said document to be for that purpose, or is claimed by an officer of the sanitary authority, or
 - (ii.) It is proved that the refusal or failure is with intent to prevent the discovery of some contravention of this Act or any bye-law under this Act, or
 - (iii.) The refusal or failure is declared by the enactment conferring the right of entry to render the person refusing or failing subject to a fine,

be liable to a fine not exceeding five pounds.

As to the authentication of the document showing the right to enter, see section 127, *post*. The signature of the clerk will be the general mode of authentication.

As to the recovery of the fine, see section 117, *post*.

SECT. 115. This section does not authorise a forcible entry except under a Note. warrant under the next sub-section.

(3) If a justice is satisfied by information on oath—

- (a.) That there is reasonable ground for such entry, and that there has been a refusal or failure to admit to such premises, and either that reasonable notice of the intention to apply to a justice for a warrant has been given, or that the giving of notice would defeat the object of the entry, or
- (b.) That there is reasonable cause to believe that there is on the said premises some contravention of this Act, or of any bye-law under this Act, and that an application for admission, or notice of an application for the warrant would defeat the object of the entry,

the justice may by warrant under his hand authorise the sanitary authority or their officers or other person, as the case may require, to enter the premises, and if need be by force, with such assistants as they or he may require, and there execute their duties under this Act.

As to the form of the warrant, see Form E. in the Third Schedule, *post.*

(4) Any person obstructing the execution of any such warrant, or of any warrant granted by a justice in pursuance of any other provision of this Act, and authorising the entry by the sanitary authority or their officer or any other person into any premises, shall be liable to a fine not exceeding twenty pounds, or, in a case where a greater punishment is imposed by this Act or any other enactment, either to such fine or to that greater punishment.

As to the recovery of this fine, see section 117, *post.*

(5) The warrant shall continue in force until the purpose for which the entry is necessary has been satisfied.

(6) Where a house or part of a house is alleged to be over-crowded, so as to be a nuisance liable to be dealt with summarily under this Act, a warrant under this section may authorise an entry into such house, or part of a house, at any hour of the day or night specified in the warrant.

It may be impossible to detect a case of over-crowding without entry by night, *i.e.*, between 9 P.M. and 6 A.M. The general right of entry given by section 10 is limited to entry by day.

116.—(1) If any person—

Penalty
on ob-
struction

(a.) Wilfully obstructs any member or officer of a sanitary authority, or any person duly employed in the execution of this Act, or

(b.) Destroys, pulls down, injures, or defaces any bye-law, notice, or other matter put up by authority of the Local Government Board or county council, or of a sanitary authority, or any board or other thing upon which such bye-law, notice, or matter is placed or inscribed, or

(c.) Wilfully damages any works or property belonging to any sanitary authority,

he shall be liable to a fine not exceeding five pounds.

It should be observed that in clause (c.) the words are "wilfully damages," and not "wilfully and maliciously damages." In *White v. Feast*, L. R. 7 Q. B. 353, BLACKBURN, J., said:—"It is obvious that very many injuries may be done to property wilfully, without being malicious, by persons so poor that a civil action would be no remedy, so that it might well be desirable to protect property, and yet not desirable that the person, though poor, should be ousted of his civil rights if the act were done under a fair and reasonable supposition of right." And see *Watkins v. Major*, L. R. 10 C. P. 662.

As to the recovery of the fine, see the next section.

(2) Where the occupier of any premises prevents the owner thereof from obeying or carrying into effect any

SECT. 116. provision of this Act, a petty sessional court, on complaint, shall by order require such occupier to permit the execution of any works which appear to the court necessary for the purpose of obeying or carrying into effect such provision of this Act; and if within twenty-four hours after service on him of the order such occupier fails to comply therewith, he shall be liable to a fine not exceeding five pounds for every day during the continuance of such non-compliance.

The 18 & 19 Vict. c. 120, s. 209, contained a similar provision. The corresponding section of the Public Health Act, 1875, is section 306.

As to the meaning of the expression "petty sessional court," see the note to section 5, sub-section (8), *ante*, p. 21.

As to the service of the order, see section 128, *post*.

As to the recovery of the fine, see the next section.

(3) If the occupier of any premises, when requested by or on behalf of the sanitary authority to state the name and address of the owner of the premises, refuses or wilfully omits to disclose or wilfully misstates the same, he shall (unless he shows cause to the satisfaction of the court for his refusal) be liable to a fine not exceeding five pounds.

This is a re-enactment of 18 & 19 Vict. c. 120, s. 209. As to the recovery of the penalty, see the next section.

Summary proceedings for offences, expenses, &c.

117.—(1) All offences, fines, penalties, forfeitures, costs, and expenses under this Act or any bye-law made under this Act directed to be prosecuted or recovered in a summary manner, or the prosecution or recovery of which is not otherwise provided for, may be prosecuted and recovered in manner directed by the Summary Jurisdiction Acts.

Offences will be prosecuted, and fines, &c., recovered before a metropolitan police magistrate, or two or more justices sitting in open court, in manner provided by the Summary Jurisdiction Acts.

It is necessary to bear in mind the distinction between a proceeding

to reeover a fine for an offence which is a criminal proceeding, and a proceeding to recover a liquidated sum due to the complainant, such as expenses incurred under this Act in executing works. The fine is enforced by distress, and in default of distress imprisonment, without regard to the means of the defendant. But the liquidated sum is a civil debt as defined by sections 6, 35, of the Summary Jurisdiction Act, 1879, and imprisonment cannot be imposed in default of distress without proof of means. The distinction is clearly pointed out in *Reg. v. Paget*, 8 Q. B. D. 151; 51 L. J. M. C. 9; 45 L. T. (N.S.) 794; 30 W. R. 336; 46 J. P. 151.

SECT. 117.
Note.

(2) Proceedings for the recovery of a demand not exceeding fifty pounds, which a sanitary authority or any person are or is empowered to recover in a summary manner, may, at the option of the authority or person, be taken in the county court as if such demand were a debt.

But for this provision there would be no right of action in cases within the preceding sub-section, for it is a general rule that where a statute creates a liability and provides means of enforcing it, there is no other remedy. See *Vestry of St. Pancras v. Batterbury*, 2 C. B. (N.S.) 477; 26 L. J. C. P. 243; 3 Jnr. (N.S.) 1106; 21 J. P. 424; *Doe v. Bridges*, 1 B. & Ad., at p. 859; *Re Boor*, 40 Ch. D., at p. 576; *Lamplugh v. Norton*, 22 Q. B. D., at p. 456. Therefore, in cases within sub-section (1), where the demand exceeds 50*l.*, it is submitted that there is no cause of action in the High Court.

A similar clause is section 261 of the Public Health Act, 1875. Under that section it has been held that the right of action in the county court being an alternative remedy, the action must be brought within the six months limited by 11 & 12 Vict. c. 43, s. 11, as in summary proceedings: *Tottenham Local Board v. Rowell*, 1 Ex. D. 514; 46 L. J. Q. B. 432; 35 L. T. (N.S.) 887; 25 W. R. 135; *West Ham Local Board v. Maddams*, 1 Ex. D. 516*n.*; 33 L. T. (N.S.) 809; 40 J. P. 470.

(3) A proceeding under this Act shall not be taken by the county council against a sanitary authority save with the sanction of the Local Government Board, unless such proceeding is for the recovery of expenses

SECT. 117. or of money due from the sanitary authority to the council.

Thus a proceeding could not be instituted by the county council under section 22 without the sanction of the Local Government Board ; but such sanction is not required for the recovery of expenses under section 100.

Evidence by defendant.

118. Any person charged with an offence under this Act, and the wife or husband of such person, may, if such person thinks fit, be called, sworn, examined, and cross-examined as an ordinary witness in the case.

This is a new provision. But for it, a defendant, or the husband or wife of a defendant, would not be a competent witness in any criminal proceeding under the Act ; and the term " criminal proceeding," includes all cases in which a defendant is liable to a fine for an infringement of the Act, or of a byc-law. Now a defendant, and the husband or wife of a defendant, are competent and compellable witnesses in cases under this Act, whether criminal or not.

Application of fines and disposal of things forfeited.

119.—(1) All fines recovered under this Act shall, notwithstanding anything in any other Act, be paid to the sanitary authority and applied by them in aid of their expenses in the execution of this Act, except that any fine imposed on the sanitary authority shall be paid to the county council.

As to the expenses of the sanitary authority, see section 103, *ante*, p. 173.

(2) All things forfeited under this Act may be sold or disposed of in such manner as the court ordering the forfeiture may direct.

For example, swine kept in an unfit place, or found straying in a street, are liable to be forfeited under section 17, sub-section (2), *ante*, p. 37.

Proceedings in certain cases against nuisances.

120.—(1) Where any nuisance under this Act appears to be wholly or partially caused by the acts or defaults of two or more persons, the sanitary authority or other

complainant may institute proceedings against any one SECT. 120. of such persons, or may include all or any two or more of them in one proceeding; and any one or more of such persons may be ordered to abate the nuisance, so far as it appears to the court having cognizance of the case to be caused by his or their acts or defaults, or may be prohibited from continuing any acts or defaults which in the opinion of the court contribute to the nuisance, or may be fined or otherwise punished, notwithstanding that the acts or defaults of any one of such persons would not separately have caused a nuisance; and the costs may be distributed as to the court may appear fair and reasonable.

This sub-section is taken from 18 & 19 Vict. c. 121, ss. 33, 35, and corresponds to section 255 of the Public Health Act, 1875.

In consequence of the overflow of the sewage from the premises of the respondent and the premises of other persons, it ran some distance to the premises of A., where it accumulated and constituted a nuisance. While it was on the premises of the respondent and the others it was no nuisance, and it became such only when it reached the premises of A. It was held that an order might be made on each party whose sewage assisted in causing the nuisance: *Hendon Union (Guardians of) v. Bowles*, 20 L. T. (N.S.) 609; 16 W. R. 510; 34 J. P. 19. And see *Brown v. Bussell*, *ante*, p. 15.

(2) Proceedings against several persons included in one complaint shall not abate by reason of the death of any among the persons so included, but all such proceedings may be carried on as if the deceased person had not been originally so included.

This provision is also contained in section 255 of the Public Health Act, 1875, but has not hitherto been contained in any of the Acts relating to London.

(3) Where some only of the persons by whose act or default any nuisance has been caused have been proceeded against under this Act, they shall, without prejudice to any other remedy, be entitled to recover in a

SECT. 120. summary manner from the other persons who were not proceeded against a proportionate part of the costs of and incidental to such proceedings and abating such nuisance, and of any fine and costs ordered to be paid by the court in such proceedings.

This is a new provision, conferring on the persons proceeded against a right to contribution from all other persons who might have been made co-defendants with them, and this right to contribution extends even to the fine and costs of the legal proceedings.

(4) Whenever in any proceeding under the provisions of this Act relating to nuisances it becomes necessary to mention or refer to the owner or occupier of any premises, it shall be sufficient to designate him as the "owner" or "occupier" of such premises, without name or further description.

This sub-section is taken from 18 & 19 Vict. c. 121, s. 35. It corresponds to section 267 of the Public Health Act, 1875. As to the service of a notice, &c., addressed to the owner or occupier simply, see section 128, *post*.

Recovery
of ex-
penses by
sanitary
authority
from
owner or
occupier.

121. Any costs and expenses which are recoverable under this Act by a sanitary authority from an owner of premises may be recovered from the occupier for the time being of such premises ; (a) and the owner shall allow the occupier to deduct any money which he pays under this enactment out of the rent from time to time becoming due in respect of the premises, as if the same had been actually paid to the owner as part of the rent : Provided that—

(a.) The occupier shall not be so required to pay any further sum than the amount of rent which either is for the time being due from him, or which after demand from him of such costs or expenses, and notice not to pay any rent without first deducting the same, (b) becomes payable by

him, unless he refuses, on the application of the **SECT. 121.** sanitary authority, truly to disclose the amount of his rent and the name and address of the person to whom such rent is payable; but the burden of proof that the sum demanded from any such occupier is greater than the aforesaid amount of rent shall lie on such occupier; and

(b.) Nothing in this section shall affect any contract between any owner and occupier of any premises whereby the occupier agrees to pay or discharge all rates, dues, and sums of money payable in respect of such premises, or shall affect any contract whatsoever between landlord and tenant. (c)

This section is taken from 25 & 26 Vict. c. 102, s. 96, and 29 & 30 Vict. c. 90, s. 34. It is identical in terms with section 104 of the Public Health Act, 1875.

(a) Upon similar words in 25 & 26 Vict. c. 102, s. 36, it was held that an unsatisfied judgment against the owner for a proportion of paving expenses was no bar to an action for the same expenses against the occupier: *Bermondsey (Vestry of) v. Ramsay*, L. R. 6 C. P. 247; 40 L. J. C. P. 206; 24 L. T. (N.S.) 429; 19 W. R. 774; 35 J. P. 567. See also as to the right to proceed against a subsequent owner: *Plumstead District Board of Works v. Ingoldby*, L. R. 8 Ex. 63, 174; 42 L. J. Ex. 50, 136; 29 L. T. (N.S.) 375; 21 W. R. 77, 817; 37 J. P. 759. It should be observed that this section does not, nor does any other section in this Act, make the expenses a charge on the premises. Upon similar words in the Metropolis Management Acts it has been held that there is no charge upon the land, but only successive personal liabilities imposed on the successive owners. Therefore, where an owner sold premises, in respect of which paving expenses were due and the purchaser had to pay such expenses, it was held that he could not recover from the vendor: *Egg v. Blayney*, 21 Q. B. D. 107; 57 L. J. Q. B. 460; 59 L. T. (N.S.) 65; 36 W. R. 893; 52 J. P. 517.

(b) The sanitary authority must make this demand and serve this notice. As to the authentication and service of the notice, see sections 127, 128, *post*.

On similar words in 25 & 26 Vict. c. 102, s. 96, it was held that in

SECT. 121. order to entitle an occupier to avail himself of the proviso, the money

Note. must have been actually paid, and consequently that a distress for rent which became due after a notice under that section made before payment to the vestry which gave the notice was not illegal: *Ryan v. Thompson*, L. R. 3 C. P. 144; 37 L. J. C. P. 134; 17 L. T. (N.S.) 506; 16 W. R. 314; 32 J. P. 135.

A similar clause is to be found in other Acts; for example, the Public Health Act, 1875, ss. 104, 226. The following cases decided upon the construction of covenants in leases and the respective liabilities of landlord and tenant will serve to illustrate the text:—

By an agreement marsh lands were demised, subject to a condition that the tenant should pay all outgoings, rates, taxes, costs, &c., whether parochial or parliamentary, which were and might be chargeable on the lands. An assessment was made by the Commissioners of Sewers for the permanent benefit of the lands, in certain proportions upon the owners and occupiers. For four years the tenant paid in the first instance both his own share and that of his landlord, and upon each half-year's settlement of accounts, for rent due, with the landlord's agent, who was ignorant of the agreement. The sum so paid was allowed towards the rent, and the receipts were given for the balance:—Held, in an action brought upon the agreement to recover the sums so allowed as arrears of rent, that the facts supported a plea of payment of the rent: *Waller v. Andrews*, 3 M. & W. 312. But if a tenant voluntarily pays taxes which he alleges ought to have been paid by the landlord and afterwards pays rent without deduction, he cannot recover the amount against the landlord: *Saunderson v. Hanson*, 3 C. & P. 314; and see *Andrew v. Hancock*, 1 B. & B. 37; *Fuller v. Abbot*, 4 Taunt. 105. In order to entitle a tenant to deduct from his rent a payment which he is entitled to deduct under a statute, the money must have been actually paid: *Ryan v. Thompson*, L. R. 3 C. P. 144; 37 L. J. C. P. 134; 17 L. T. (N.S.) 506; 16 W. R. 314; 32 J. P. 135. As to the rating of mines and the right to deduct one-half of the rates under section 8 of the Rating Act, 1874 (37 & 38 Vict. c. 54), see *Devonshire (Duke of) v. Barrow Hematite Steel Company*, 2 Q. B. D. 286; 46 L. J. Q. B. 96; 35 L. T. (N.S.) 474; 25 W. R. 60; *Chaloner v. Bolckow*, 3 App. Cas. 933; 47 L. J. Q. B. 562; 39 L. T. (N.S.) 134; 26 W. R. 541; 42 J. P. 756.

A. demised land to B. upon a building lease, at the yearly rent of 60*l.* clear of all rates and assessments, the sewers rate and land tax excepted, with the usual covenant for payment of rent; B. having by building on the land increased its rateable value to 300*l.* per annum:—Held, that he was only entitled to deduct the sewers rate and land tax

upon the original rent, and not in respect of the improved value : SECT. 121. *Smith v. Humble*, 15 C. B. 321. And see *Watson v. Atkins*, 3 B. & Ald. 647 ; *Graham v. Wade*, 16 East, 29 ; *Watson v. Home*, 7 B. & C. 285 ; 1 M. & R. 191. But when a lessee covenanted that he would pay all taxes, charges, rates, tithes, &c., which then were or should at any time thereafter during that demise be taxed, charged, assessed, or imposed, upon the said demised premises :—Held, that the covenant was not confined to rates payable by the landlord, but meant all rates then imposed on the lessee in respect of his occupation, and all future rates which might be imposed on the land itself : *Hurst v. Hurst*, 4 Ex. 571.

Note.

A landlord, liable among others to repair a bridge *ratione tenuræ*, demised the land, and the lessee covenanted to pay the rent, clear of land tax and all other taxes and deductions whatsoever, either parliamentary or parochial, taxed or imposed, or to be taxed or imposed, upon the premises, or upon the lessor in respect thereof, property tax excepted. By statute, reciting the liability *ratione tenuræ* and that part of the bridge was out of repair, it was enacted that the landowners liable as above should repair the said parts, during the continuance of the Act ; and on their default road trustees were empowered to do the repairs and recover against the owners. A power of distress under a justice's warrant was also given to enforce payment, and for raising the sums required power was given to the landowners to call meetings, and to meet and make rates according to the value of the chargeable lands, such rates to be levied, if necessary, by distress. A subsequent Act, also reciting the above-mentioned liability, made further provision as to the holding of such meetings and laying rates for the said repair :—Held, that the original liability for contribution to repairs, did not, by these enactments, become a parliamentary tax or deduction within the lessee's covenant, and, therefore, the court finding no clause in the above statutes which extended the ultimate liability to lessees and occupiers as well as owners, that the lessee having been compelled, in the lessor's default, to pay a rate made as above and charged upon him as lessee and occupier, might recover the amount from the lessor : *Baker v. Greenhill*, 3 Q. B. 148 ; 11 L. J. Q. B. 161.

By a local Act commissioners were authorised to flag footways, and the costs thereof were to be paid by the tenants or occupiers of the houses next adjoining. Another clause enabled the tenant to deduct the costs so paid by him out of his rent :—Held, that this charge was within the terms of a covenant in a lease subsequently made, whereby the tenant covenanted to pay all taxes, rates, duties, levies, assessments,

SECT. 121. and payments whatever, which were or during the term might be rated, levied, assessed, or imposed on the premises : *Payne v. Burridge*, 12 M. & W. 727 ; 13 L. J. Ex. 190.

Note. A sewers rate is not a "parliamentary tax" within the meaning of a covenant to pay parliamentary taxes : *Brewster v. Kitchel*, 2 Salk. 615 ; *Palmer v. Earith*, 14 M. & W. 428.

Drainage works done upon premises under the Metropolis Management Act, 1885 (18 & 19 Vict. c. 120), were held to be payable by a lessee under a covenant to pay, bear, and discharge "all such parliamentary, parochial, county, district and occasional levies, rates, assessments, taxes, charges, impositions, contributions, burdens, duties, and services whatsoever, as during the term should be taxed, assessed, or imposed, upon or in respect of the premises or any part thereof :" *Sweet v. Seager*, 2 C. B. (N.S.) 119 ; 3 Jur. (N.S.) 588 ; 5 W. R. 560 ; 21 J. P. 406.

By a local Act a town council were empowered to order streets to be sewered and paved by the owners of adjoining premises, and on their default themselves to do the work and charge the owners. The council were also empowered to require the tenants to pay, it being made compulsory on the owner to allow such payments to be deducted from the rent. Premises in a street were demised by the plaintiff to the defendant, the latter covenanting that he would pay and discharge all taxes, rates, duties, assessments, and impositions whatsoever (except property tax), which during the term should become payable in respect of the demised premises. The plaintiff having paid certain expenses of paving the street, sought repayment from the defendant. But it was held, distinguishing *Sweet v. Seager, supra*, that the payment having been made by the plaintiff, not for a rate, assessment, or imposition, which had become payable in respect of the demised premises, but for a breach of duty imposed upon him by the Act, he was not entitled to recover the amount : *Tidswell v. Whitworth*, L. R. 2 C. P. 326 ; 36 L. J. C. P. 103 ; 15 L. T. (N.S.) 574 ; 15 W. R. 427.

Under a covenant to pay all taxes, rates, duties, and assessments whatsoever, which during the continuance of the demise should be taxed, &c., on the tenant or landlord of the demised premises in respect thereof, the tenant was held liable to pay paving expenses under the Metropolis Management Acts : *Thompson v. Lapworth*, L. R. 3 C. P. 149 ; 37 L. J. C. P. 74 ; 17 L. T. (N.S.) 507 ; 16 W. R. 312 ; 32 J. P. 184.

A landlord's covenant to pay all rates, taxes, tithes, and all other charges payable in respect of the premises, was held not to apply to the

costs of cleansing a piece of ornamental water effected under an order SECT. 121, in execution of the Nuisances Removal Act (18 & 19 Vict. c. 121), s. 16 : *Bird v. Elwes*, L. R. 8 Ex. 225 ; 37 L. J. Ex. 91 ; 18 L. T. (N.S.) 727 ; 16 W. R. 1120 ; 32 J. P. 694.

Note.

A tenant covenanted to pay all outgoings charged on the premises or on the landlord in respect thereof. A drain was made after notice served upon him by the lessee, who was in occupation under an arrangement made between the landlord and tenant, that the person held to be liable should bear the charge, and it was decided that the lessee was liable : *Crosse v. Raw*, L. R. 9 Ex. 209 ; 43 L. J. Ex. 144 ; 23 W. R. 6. This decision was followed in a very recent case. There the plaintiff demised premises to the defendant at a yearly rent "clear of all present and future rates, taxes, and deductions," and a covenant was contained in the lease that the defendant should pay the rent, and also bear and pay all the rates, taxes, and outgoings then payable or thereafter to become payable in respect of the premises. The plaintiff having paid certain paving expenses, brought an action to recover them from the defendant. It was held that the omission of the word "outgoings" in the redendum clause did not qualify the covenant so as to take it out of the decision in *Crosse v. Raw*, and that the plaintiff was, therefore, entitled to recover : *Gardner v. Furness Railway Company*, 47 J. P. 232. *Crosse v. Raw* was also approved of by the Court of Appeal in *Budd v. Marshall, infra*.

Tidswell v. Whitworth (supra) was followed, and *Thompson v. Lapworth* distinguished in *Rawlins v. Briggs*, 3 C. P. D. 368 ; 47 L. J. C. P. 487 ; 27 W. R. 138 ; 42 J. P. 791. There the covenant was to pay all and all manner of taxes, rates, charges, assessments, and impositions whatever, then or at any time or times during the term to be charged, assessed, or imposed, on the demised premises, or in respect thereof, or of the said rent by authority of Parliament or otherwise whatsoever. During the term the lessor had to pay a sum in respect of the abatement of a nuisance after notice by the local authority, and it was held he could not recover from the lessee. This case should be compared with *Budd v. Marshall*, 5 C. P. D. 481 ; 50 L. J. C. P. 21 ; 42 L. T. (N.S.) 793 ; 29 W. R. 148 ; 44 J. P. 584. There the defendant was tenant to the plaintiffs, and had covenanted to "bear, pay, and discharge all taxes, rates, duties, and assessments whatsoever, whether parliamentary, parochial, or otherwise." The drainage having become defective, the local authority required the owners to abate the nuisance, and obtained an order from a justice to the like effect. The plaintiffs having executed the works necessary to enable them to obey the order, sought to recover the costs from the

SECT. 121. defendant under his covenant. It was held by BRAMWELL and Note. BAGGALLAY, L.J.J. (BRETT, L.J., dissenting), that the action was maintainable. In another case the plaintiff bought of the defendant three houses, and by the contract of sale the latter agreed to discharge "all rates, taxes, and outgoings," up to the time of completion. The purchase was completed, and afterwards payment was demanded from the plaintiffs of the expenses incurred under a local Act in improving the street in which the houses stood. The work had been done some time before the houses belonged to the defendant, and at the time of sale to him the plaintiffs knew of the charge. The plaintiffs having paid the sum demanded, sued the defendant for repayment. It was held, distinguishing *Tidswell v. Whitworth*, that the charge for improving the street was an "outgoing" which the defendant had bound himself to discharge, and that the plaintiffs were entitled to recover: *Midgley v. Coppock*, 4 Ex. D. 309; 48 L. J. Ex. 674; 40 L. T. (N.S.) 870; 43 J. P. 683.

The defendant, on taking a house, covenanted to pay "all rates, taxes, charges, and assessments whatsoever, which now are or may be charged or assessed upon the said premises or any part thereof, or upon any person or persons in respect thereof." It was held that paving expenses under section 150 were "a charge upon the premises," or "upon a person in respect thereof," so as to entitle the lessor to recover from the defendant the amount of such expenses when paid by him: *Hartley v. Hudson*, 4 C. P. D. 367; 48 L. J. C. P. 701; 43 J. P. 784.

The lessee of a house in a new street within the metropolitan district covenanted with his lessor to pay all rates and assessments taxed, rated, charged, assessed, or imposed upon the demised premises, or upon or payable by the occupier or tenant in respect thereof. It was held that the proportion of the expense of paving the new street, assessed on the demised house under the Metropolis Management Acts, was not a rate payable by the tenant under his covenant, as not being charged on the premises, but upon the owner in respect of the premises: *Allum v. Dickinson*, 9 Q. B. D. 632; 47 L. T. (N.S.) 493; 30 W. R. 930; 52 L. J. Q. B. 190; 47 J. P. 102.

By an agreement of lease the tenant of a house in the metropolis agreed to pay "all rates, taxes, and assessments payable in respect of the premises during the term." It was held that a sum assessed upon the owners as their proportion of the expense of paving the street upon which the premises abutted, was not a rate, tax, or assessment within the meaning of the covenant, but a charge imposed upon the owner for the permanent improvement of his property: *Wilkinson v. Collyer*, 13

Q. B. D. 1 ; 53 L. J. Q. B. 278 ; 51 L. T. (N.S.) 299 ; 32 W. R. 614 ; SECT. 121. 48 J. P. 791. It should be noticed that in the metropolis paving expenses are not a charge upon the premises, while they are such a charge in districts subject to the Public Health Act, 1875 (see section 257, *post*). It is submitted that this is the true point of distinction between the last two cases and *Hartley v. Hudson, supra*.

Note.

In a lease of a shop and basement and of three rooms on the third floor of the same house, the lessor covenanted to pay "all rates and taxes chargeable in respect of the demised premises." Water was separately supplied by a water company to the shop and basement, and was paid for by the tenant. It was held that the lessee was entitled to recover from the lessor the sum so paid, as being a *rate* within the meaning of the covenant : *Direct Spanish Telegraph Co., Limited, v. Shepherd*, 13 Q. B. D. 202 ; 53 L. J. Q. B. 420 ; 51 L. T. (N.S.) 124 ; 32 W. R. 717 ; 48 J. P. 550. This decision was discussed in a subsequent case. There, by a covenant contained in a lease of a warehouse in the City of London, the lessor covenanted with the lessees to pay all rates, taxes, and impositions whatsoever, whether parliamentary, parochial, or imposed by the corporation of the City of London or otherwise howsoever, which then were or thereafter might be rated, charged, or assessed on the said premises or any part thereof, or on the said yearly rent, or on the landlord, owner, or tenants of the said premises in respect thereof. Water having been supplied to the demised premises for domestic purposes by the New River Company under the provisions of the Waterworks Clauses Act, 1847, the lessees paid the water rates due in respect of such supply, and sought to recover the same from the lessor. It was held that such water rates were not rates or impositions imposed on or in respect of the premises within the meaning of the covenant, and, therefore, the lessees were not entitled to recover the same from the lessor : *Badcock v. Hunt*, 22 Q. B. D. 145 ; 58 L. J. Q. B. 134 ; 60 L. T. (N.S.) 314 ; 37 W. R. 205 ; 53 J. P. 340.

By a lease of land in the metropolis the lessee covenanted that he would pay "the tithe or rentcharge in lieu of tithes, land tax (if any), sewers rates, main drainage rates, and all other taxes, rates, impositions, and outgoings whatsoever, then or thereafter to be charged or imposed on or in respect of the said premises, or on any part thereof (except the landlord's property tax)." The lessor having had to pay his share of the cost of paving a new street, sought to recover the amount from the lessee, but MATHEW, J., held that the case was governed by *Tidswell v. Whitworth and Rawlins v. Briggs, supra*, and gave judgment for the defendants : *Hill v. Edward*, W. N. 1885, p. 32. This case nearly resembles *Allum v. Dickinson, supra*.

SECT. 121. The lessee of a house in a new street within the metropolitan district covenanted with his lessor to pay during the term "all existing and future taxes, rates, assessments, land tax, tithe, or tithe rentcharge, and outgoings of every description for the time being, payable either by the landlord or tenant in respect of the said premises." It was held that the owner's proportion of the cost of paving the street, under 25 & 26 Vict. c. 102, s. 96, was an outgoing payable by the lessee under this covenant: *Aldridge v. Ferne*, 17 Q. B. D. 212. The court pointed out that the words of the covenant in this case were more comprehensive than in *Wilkinson v. Collyer*, or *Hill v. Edward, supra*. A testator directed the rents and profits of a leasehold house "after payment of all ordinary outgoings for ground rent, repairs, taxes, expenses of insurance, or otherwise" to be paid to his widow for life, and after her death to certain other persons. The trustees of the will upon notice from the vestry under the Metropolis Management Acts executed certain drainage works:—Held, that the cost of the works was to be paid by the tenant for life and did not constitute a charge on the corpus of the estate: *Re Crawley; Acton v. Crawley*, 49 J. P. 550.

The plaintiffs were tenants of a house in Lambeth under a lease from the defendant, by which a rent of 40*l.* was reserved "to be paid without deduction, except landlord's property tax, by equal quarterly payments, free and clear from all deductions for main drainage and sewers rates, metropolitan and local improvement rates, taxes, land tax, tithe rentcharge and commutation in lieu of tithes," and the lessees covenanted to pay "the said yearly rent of 40*l.* at the times and in manner aforesaid, free and clear of all deduction except as aforesaid," and to pay and discharge during the said tenancy all main drainage and sewers rates, &c. (following the words of the reservation). In May, 1890, the Lambeth vestry required the defendant, as owner of the premises, to construct a drain into the common sewer under the Metropolis Local Management Act (18 & 19 Vict. c. 120), s. 73, and the defendant not complying, did the work themselves, and recovered the costs 17*l.* 17*s.* from the plaintiffs, under section 96 of the Amending Act (25 & 26 Vict. c. 102). The plaintiffs deducted this amount from their next half-year's rent, and upon the defendant threatening to distrain, brought this action for an injunction to restrain him:—Held, that the payment in question was not within the express covenant in the lease, and the covenant to pay the rent without deduction could not be construed as a contract between landlord and tenant to exclude the tenant's right to deduct this payment from his rent under section 96 of the Act 25 & 26 Vict. c. 102: *Home and Colonial Stores v. Tod*, 63 L. T. (N.S.) 829.

By an agreement for a lease of a house for three years, the rent of SECT. 21.
 75l. per annum, the tenant agreed "to pay all sewers rates, tithe rent-charge, land tax (if any), and all existing and future rates, taxes, assessments, and outgoings of every description, payable by landlord, or tenant in respect of the premises during the tenancy ~~and the~~ landl^{or}d's property tax)." The Local board ~~had~~ laid upon the landlord and tenant for 68l. 15s. ~~the~~ share of the expenses of paving the road abutting on the house which had been apportioned to it:—Held, that the words of the agreement were large enough to cover this payment, and that their meaning could not be regarded as altered because the agreement was only for a term of three years. It was held, therefore, that the tenant must pay the amount claimed by the board: *Bachelor v. Biggar*, 60 L. T. (N.S.) 416; W. N. [1889], p. 51.

The respective liabilities of landlord and tenant in respect of nuisances on the demised premises have been already noticed. See the notes to section 4, *ante*, p. 11.

122. A judge or justice of the peace shall not be incapable of acting in cases arising under this Act by reason of his being a member of any sanitary authority, or by reason of his being, as one of several ratepayers, or as sanitary one of any other class of persons, liable in common with the others to contribute to or to be benefited by any rate or fund, out of which any expenses incurred by a sanitary authority are to be defrayed.

This section is taken from 29 & 30 Vict. c. 41, s. 2, which was substituted for 23 & 24 Vict. c. 77, s. 16. It is similar to section 258 of the Public Health Act, 1875.

The section merely removes the disqualification of a justice by reason of his being a member of a sanitary authority, or of his being interested as a ratepayer or the like. It does not enable him to act in cases where he has a pecuniary interest, or where he has, as a member of the sanitary authority, set the law in motion. This will appear from the following cases:—

H., the owner of a farm in the parish of Edmonton, bounded by the river Lea, entered into an agreement with the Enfield Local Board, under which he received the sewage of the Enfield district, and disposed of it over his farm. After a few months disagreements arose, and the Enfield Board took proceedings against H. to enforce the agreement. While these were still pending, H., after notice given to the board,

SECT. 122. diverted the sewage from his farm through a pipe into the old open channel or watereourse in the parish of Edmonton, through which the sewer had been used to flow into the river Lea. On this the Edmonton Local Board threatened proceedings against the Enfield Board for the nuisance ; and the Lea Conservancy took out summonses under their Act against H. for having opened the pipe into the channel, &c., and for continuing the use of it. On the summonses coming on for hearing, M., who was chairman of the Enfield Board, and had taken an active part in its proceedings, sat with three other justices on the bench. H. objected to M. sitting as a justice, but he remained, and H. was convicted in penalties. A rule for a *certiorari* was then obtained for the purpose of quashing the conviction, on the ground that M. was an interested justice. On showing cause, M. made affidavit that, though he sat on the bench, he took no part until the other justices had unanimously determined to convict, when he proposed a mitigation of the penalties, and that he did not sign the conviction :—Held, that M. had such an interest as might give him a real bias in the matter ; consequently, he ought not to have sat as a justice, and it was immaterial what part he really took in the matter ; and the court made the rule absolute with costs against M. : *Reg. v. Meyer or Harrison*, 1 Q. B. D. 173 ; 34 L. T. (N.S.) 247 ; 24 W. R. 392 ; 40 J. P. 645.

Complaint having been made to the Local Government Board of a nuisance upon premises belonging to B., in the borough of W., the board communicated with the town council of W., as the urban sanitary authority, and required them to abate the nuisance. The council having made inquiries, passed a resolution that steps should be taken for the removal of the nuisance, and took out a summons against B. At the hearing an order for the abatement of the nuisance was made. Two justices who were present were members of the town council when the resolution was passed :—Held, that the councillors who were justices had such an interest as might give them a bias in the matter ; that, consequently, they ought not to have sat as justices on the hearing of the summons, and that the rule for the *certiorari* to quash the order must be made absolute : *Reg. v. Milledge and Others, Justices of Weymouth*, 4 Q. B. D. 332 ; 48 L. J. M. C. 139 ; 40 L. T. (N.S.) 748 ; 27 W. R. 659 ; 43 J. P. 606, 650. But where justees who were members of a town council, and as such had taken an active part in the making of an order under the Dogs Act, 1871 (34 & 35 Vict. c. 56), sat to hear a complaint of non-observance of the order, it was held they had no such interest in the subject matter of the complaint as to oust their jurisdiction : *Reg. v. Huntingdon (Justices of)*, 4 Q. B. D. 522 ; 43 J. P. 767. It will be observed that in this case the

justicees had not taken any part in the ordering of the prosecution. SECT. 122. Upon this ground the decision in *Harring v. Stockton (Mayor of)*, 31 J. P. 420, may be supported. *Note.*

By a local Act for the improvement of a borough, the corporation was made the authority for the execution of the Act, with power to direct prosecutions for that purpose. An information for an offence under the Act having been preferred by an officer on behalf of the corporation, a summons was issued upon it by a justice, who was also an alderman and a member of the corporation, but it came on for hearing before justices none of whom were connected with the corporation. It was held that the justices could not properly proceed with the hearing, as the summons had been issued by one who was virtually a prosecutor : *Reg. v. Gibbon and Another, Justices of Lancashire*, 6 Q. B. D. 168 ; 29 W. R. 442. This decision was disapproved of in *Reg. v. Handsley and Others, Justices of Burnley*, 8 Q. B. D. 383 ; 51 L. J. M. C. 137 ; 30 W. R. 368 ; 46 J. P. 119. In that case it was laid down that where by statute a member of a town council may act as a justice in matters arising under the Act, in order to disqualify him from acting it is not sufficient to show that, as a member of the council, he has a pecuniary interest in the result of the information or complaint, or that the corporation of which he is a member are the prosecutors, but it must be established that he has such a substantial interest in the result of the hearing as to make it likely that he has a real bias in the matter. An officer of a corporation appointed to collect the borough rate obtained a summons against a ratepayer in arrear. In so doing he acted in the discharge of his duty, but upon his own responsibility, and without consulting the council. At the hearing the justices dismissed the summons on the ground that one of the sitting magistrates being a town councillor was thereby disqualified from adjudicating upon the summons. On motion for a *mandamus*, it was held that there was no ground for supposing either substantial interest or likelihood of bias, and consequently no disqualification. But although the mere fact that a justice is a member of the local authority does not disqualify him from acting in cases arising under this Act, yet if he be present when the prosecution is resolved upon, he cannot afterwards sit and determine the case. Therefore, where a justice was a member of a town council, and was present when a prosecution for selling unsound meat was resolved upon, it was held that he was disqualified from sitting to hear the summons : *Reg. v. Lee*, 9 Q. B. D. 394 ; 30 W. R. 750. So also where a justice had been a member of a committee appointed to report upon certain mining pollutions of a stream, and had acted upon such committee, he was held

SECT. 122. to be disqnalified to act at the hearing of a summons for polluting the stream, though he had not actnally taken part in ordering the prosecution : *Reg. v. Spalding or Spedding*, 49 J. P. 804 ; "Law Times," 12th December, 1885, p. 96.

Note. The interest which is sufficient to disqnalify need not be a direct interest. Thus, at a special sessions for appeals against poor rates, the chairman of the magistrates, who was himself appellant in one of the cases for hearing, took part in the decision of all the cases except his own. When his own case was called on he left the bench, and went to the body of the court and conducted the case himself. On a rule for a *certiorari* to bring up all the orders for the purpose of quashing them :—Held, that the chairman, being a litigant in a matter similar to the other matters before the court, was disqnalified from acting as a justice, and that the orders were bad : *Reg. v. Great Yarmouth (Justices of)*, 8 Q. B. D. 525 ; 51 L. J. M. C. 39 ; 30 W. R. 460 ; 46 J. P. 148. The fact that a *subpœna* to give evidence in a particular case has been served upon a magistrate is not of itself sufficient to disqnalify him from hearing and adjudicating upon such case : *Reg. v. Tooke*, 32 W. R. 753 ; 48 J. P. 601.

Any pecuniary interest in the subject-matter of the litigation, however slight, will disqnalify a magistrate from taking part in the decision of a case. If a magistrate has such a substantial interest other than pecuniary in the result of the hearing, as to make it likely that he will have a bias, he is disqnalified. The fact that a magistrate has been subpœnaed, and that it is intended to call him as a witness at the hearing, is not a legal disqnalification, and the High Court will not, on that ground, prohibit the magistrate from sitting. A magistrate, who was a surgeon, attended a patient professionally for injury caused by an assault. He endeavoured to induce his patient not to prosecute for the assault, and conveyed to him a message, sent by the person who had committed the assault, offering an apology, and suggesting a settlement. A summons was issued for the assault ; the magistrate was subpœnaed to give evidence for the prosecution ; and a writ of prohibition was obtained to prohibit him from sitting at the hearing. The magistrate moved to set aside the prohibition :—Held, that the acts of the magistrate did not show that he had such a substantial interest in the result as to make it likely that he would have a bias, and that the fact of his being subpœnaed did not disqnalify him from sitting, and, therefore, the prohibition must be set aside : *Reg. v. Farrant*, 20 Q. B. D. 58 ; 57 L. J. M. C. 17 ; 57 L. T. (N.S.) 880 ; 36 W. R. 184 ; 52 J. P. 116.

Where a justice of the peace is shown to have taken an active part

in defending an appeal against a decision of which he approves, but to **SECT. 122.** which he was no party, he is disqualified, on the ground of probability of bias, from taking part in deciding the appeal: *Reg. v. The Justices of Cumberland*; *Ex parte The Midland Railway*, 58 L. T. 491; 52 J. P. 502.

Note.

Where a justice is disqualified on the ground of interest, it is open to the parties to the case to waive the objection. If they acquiesce in his acting after knowledge of the disqualification, they cannot afterwards object. See *Reg. v. Richmond JJ.*, 8 Cox C. C. 314; 8 W. R. 562; 24 J. P. 422; *Ex parte Ilchester*, 25 J. P. 56; *Reg. v. Kent JJ.*, 44 J. P. 298; *Wakefield Local Board v. West Riding and Grimsby Railway Company*, L. R. 1 Q. B. 84; 6 B. & S. 794; 12 Jnr. (N.S.) 160; 35 L. J. M. C. 69; 13 L. T. (N.S.) 590; 14 W. R. 100; 30 J. P. 628.

There is no restriction here as in 11 & 12 Vict. c. 63, s. 132, and 16 Geo. 2, c. 18, as to the justice acting alone or at quarter sessions. And now, by the Justices of the Peace Act, 1867 (30 & 31 Vict. c. 115), in order that justices may act in the exception of Acts in some cases in which they would otherwise be incapable of acting, it is provided that a justice shall not be incapable of acting as a justice at any petty or special or general or quarter sessions on the trial of an offence arising under an Act to be put in exception by a municipal corporation, or a local board of health, or improvement commissioners or trustees, or any other local authority, by reason only of his being one of several rate-payers, or as one of any other class of persons liable in common with the others to contribute to or to be benefited by any fund to the account of which the penalty payable in respect of such offence is directed to be carried, or of which it will form part, or to contribute to any rate or expense in diminution of which such penalty will go.

123. The county council or a sanitary authority may appear before any court or in any legal proceeding by their clerk, or by any officer or member authorised generally or in respect of any special proceeding by resolution of such council or authority; and their clerk, or any officer or member so authorised, shall be at liberty to institute and carry on any proceeding which the county council or sanitary authority are authorised to institute and carry on under this Act.

Appearance of
sanitary
authority
in legal
proceed-
ings.

The 29 & 30 Vict. c. 90, s. 48, from which the above section is taken, extended the provision in 18 & 19 Vict. c. 121, s. 5, which had restricted

SECT. 123. the appearance of the officer to the particular case in which directions had been given. See *The Isle of Wight Ferry Company v. Ryde Commissioners*, 25 J. P. 454.

Note. — A similar provision is contained in section 259 of the Public Health Act, 1875.

The appearance mentioned in this section refers to appearance in court. The clerk may appear without any authority for that purpose, although he must in every case have authority from his board or a committee under section 99, *ante*, to take proceedings in their name. Any other officer must have an authority to appear, either given generally or for the special proceeding. Thus a sanitary inspector may have a general authority, but it should be in writing, containing a copy of the resolution as entered on the minutes. As regards the practice of justices, it may be noticed that where they refused to determine a complaint under 11 & 12 Vict. c. 68, without the attendance of the clerk of a local board, the Court of Queen's Bench refused to interfere: *Ex parte Leamington Local Board*, 5 L. T. (N.S.) 637.

A local board acting under an Act which embodied the provisions of section 259 of the Public Health Act, 1875, passed a resolution that in pursuance of the power vested in the board by section 259 of the Public Health Act, 1875, the superintendent and the sergeants of the county police for the time being acting within the district be authorised as officers of the board to institute and prosecute all such proceedings as may be necessary under the specified clauses of the local Act. In an information preferred by the superintendent of police against the appellant for an offence under the Act:—Held, that the local board had no power under section 259 to delegate the prosecution to the police, who are not officers of the board nor under their control: *Kyle v. Barbor*, 58 L. T. 229; 52 J. P. 501, 725; 11 Cox C. C. 378.

Protection
of sanitary
authority
and their
officers
from
personal
liability.

124. No matter or thing done, and no contract entered into by the county council or any sanitary authority, and no matter or thing done by any member of such council or authority, or by any officer of such council or authority, or other person whomsoever acting under the direction of such council or authority, shall, if the matter or thing were done, or the contract were entered into *bonâ fide* for the purpose of executing this Act, subject them or any of them personally to any action, liability, claim, or demand whatsoever; and any expense incurred by the

county council or any such authority, member, officer, or other person acting as last aforesaid, shall be borne and repaid out of the rate applicable by that council or authority to the purposes of this Act : SECT. 124.

Provided that nothing in this section shall exempt any member of the county council or of any such authority from liability to be surcharged with the amount of any payment which may be disallowed by the auditor in the accounts of such council or authority, and which that member authorised or joined in authorising.

This section replaces 18 & 19 Vict. c. 121, s. 42. It is identical in terms with section 265 of the Public Health Act, 1875.

“The effect of clauses of this sort is not to leave a complaining party remediless, but to oblige him to bring his action against the public board or against the commissioners as a body. . . . And any damages that may be recovered will be payable out of the funds at their disposal under the provisions for payment for damages and costs” : “Addison on Torts,” 5th edition, p. 669. The effect of this section is, therefore, to exempt from personal liability every one who has *bonâ fide* contracted with the local board to do some act under their direction, though he may thereby cause damage to another person which the Act itself does not justify or excuse. Thus, where the defendants were contractors acting under the direction of the Metropolitan Commissioners of Sewers, and while so acting injured the plaintiff’s premises, it was held that they were not liable : *Ward v. Lee*, 7 E. & B. 426 ; 26 L. J. Q. B. 142 ; 21 Jur. 557 ; 5 W. R. 403 ; 21 J. P. 179. In *Le Feuvre v. Miller*, 8 E. & B. 321 ; 26 L. J. M. C. 175 ; 21 J. P. 436, a question was raised and argued whether a bailiff who executed a warrant of distress to enforce payment of a rate alleged to be illegal, was within this section. The question was not decided, but the court seemed to be of opinion that the case was within the principle of *Ward v. Lee*. And see *Southampton and Itchen Floating Bridge Company v. Southampton Local Board, infra*. But the effect of the section is not to relieve a contractor from liability for the negligence of himself or his servants. “When there is no negligence, a party doing an act in obedience to the Board of Health is not liable ; in that case he is very properly absolved, and the superior alone is liable. But if he is guilty of negligence in doing the act, and damage ensues, he is personally liable.”—Per Lord CAMPBELL, C.J., in *Arthy v. Coleman*, 6 W. R. 34 ; 21 J. P. 771. And see *Jones v.*

SECT. 124. *Bird*, 5 B. & Ald. 837; *Clothier v. Webster*, 12 C. B. (N.S.) 790; 31

Note. L. J. C. P. 316. But a person who contracts for works under a local board is not liable for an injury which arises out of these works long after they are completed; for example, when after a sewer has been laid in a road by the contractor, there is a subsequent subsidence, it being the duty of the board to look after such occurrences: *Hyams v. Webster*, L. R. 2 Q. B. 264; 36 L. J. Q. B. 166; 16 L. T. (N.S.) 118; 15 W. R. 619; 31 J. P. 439. And see *Smith v. West Derby Local Board*, *ante*; 3 C. P. D. 423; 47 L. J. C. P. 607; 38 L. T. (N.S.) 716; 27 W. R. 137; 42 J. P. 615. A surveyor who executed an illegal order of a highway board was held to be personally liable, but not the clerk, who only wrote out the order: *Mill v. Hawker*, L. R. 10 Ex. 92; 44 L. J. Ex. 49; 33 L. T. (N.S.) 177; 23 W. R. 348; 39 J. P. 181. This case was distinguished in *Monks v. Dillon*, 10 L. R. 1r. 349. There works were executed by the contractor of a drainage board, pursuant to contract with them and by their authority, under the superintendence of the engineer and his assistants, and according to plans and specifications prepared by the engineer, who directed and instructed the contractor, and was frequently present on the ground, and saw the works in progress, but did not further interfere. Some of the works were admittedly acts of trespass to the lands of the plaintiff, as the board had not obtained an assessment of compensation, or paid such compensation before entry. It was held that the engineer was not liable for the trespass so committed.

The effect of the rule as above stated is to render the local board liable to be sued in respect of damages arising out of their negligence in omitting to cause proper precautions to be taken in the exercise of works which they order to be done. This was stated in *Ward v. Lee* *supra*, and held in *Southampton and Itchin Bridge Company v. Southampton Local Board*, 8 E. & B. 801; 27 L. J. Q. B. 128; 3 Jnr. (N.S.) 1261. In the latter case the local board were held to be liable to an action for so negligently and improperly constructing a sewer, as to cause a nuisance by its discharge, and an injury to the plaintiffs. Again, where a local board had ordered a new sewer to be constructed in their district, under a contract and plans which did not provide for a penstock or flap required to prevent the plaintiff's premises from being flooded by the influx of a river into them through the sewer, and in consequence of such omission they were flooded and greatly damaged, it was held that the local board were liable *Ruck v. Williams*, 3 H. & N. 308; 27 L. J. Ex. 357; 22 J. P. 420. Where a corporation provided an improper machine in a wash-house, they were held liable for a damage caused thereby: *Cowley v. Sunderland (Mayor*

of), 6 H. & N. 565; 30 L. J. Ex. 127, 177; 9 W. R. 668; 25 SECT. 124. J. P. 434.

Note.

By a general system of drainage made by the defendants in a particular district, various farms in that district were drained by several underground drains, by which the water was carried through all such farms. The defendants let one of these farms to the plaintiff, with the usual covenant for quiet enjoyment against the acts of the lessors or any persons lawfully claiming through or under them. The defendants had previously let another of such farms adjoining, but lying above the plaintiff's farm, to one C., with a right to use the drains through the plaintiff's land, so far as they were adequate to carry the water from C.'s farm. C., during the plaintiff's tenancy, first, by an excessive user of the drainage system, which was properly constructed for the purpose of drainage, caused the water passing down the drains in his farm to escape and overflow into the plaintiff's farm, and damage his crops. Secondly, by a proper user by C. of the drains passing through the plaintiff's farm, damage was also done to a field on plaintiff's farm by the escape of water; but this arose from one of the drains there having been imperfectly and improperly constructed. It was held that the defendants were liable to the plaintiff for a breach of their covenant for quiet enjoyment in respect of this last damage, as there had been within the meaning of such covenant a substantial interruption by a person who lawfully claimed through the defendants, but that the defendants were not liable for the damage done by the excessive user by C. of the drainage system, which was properly constructed, either under their covenant of quiet enjoyment, or under the law of trespass or nuisance: *Sanderson v. Mayor, &c., of Berwick*, 13 Q. B. D. 517; 53 L. J. Q. B. 559; 51 L. T. (N.S.) 495; 33 W. R. 67; 49 J. P. 6.

It has already been observed that when a contractor is employed by a local board, this section does not free him from the consequences of his own negligence or that of his servants. Where negligence on the part of such contractor is proved, and the local board have not in any way by interference or the like contributed towards the wrongful act of the contractor or his servants, the board are not liable. See *Humphreys v. Mears*, 1 M. & Ry. 30; *Duncan v. Findlater*, 6 Cl. & Fen. 894; *Steel v. South Eastern Railway Company*, 16 C. B. 550; *Butler v. Hunter*, 7 H. & N. 826; *Bayley v. Wolverhampton Waterworks Company*, 7 H. & N. 241; *Foreman v. Canterbury (Mayor of)*, L. R. 6 Q. B. 214; 40 L. J. Q. B. 138; 24 L. T. (N.S.) 385; 19 W. R. 719; 35 J. P. 629; *Smith v. South Western Railway Company*, L. R. 6 C. P. 14; *Hill v. New River Company*, 9 B. & S. 303; *Daniel v.*

SECT. 124. *Metropolitan Railway Company*, L. R. 5 H. L. 45. But if the damage

Note.

arises out of the works themselves, or if the local board are really the parties executing the works, the board are liable. See *Scott v. Manchester (Corporation of)*, 1 H. & N. 59; *Hole v. Sittingbourne Railway Company*, 6 H. & N. 488; 30 L. J. Ex. 81; *Blake v. Thirst*, 2 H. & C. 20; 32 L. J. Ex. 188; *Pitts v. Kingsbridge Highway Board*, 25 L. T. (N.S.) 195; 19 W. R. 884. Where a duty is imposed upon a public body, they are not excused from omitting to perform it, or from the imperfect or improper performance of the duty, by reason of their having engaged a contractor to do it. See *Pickard v. Smith*, 10 C. B. (N.S.) 470; *Gray v. Pullen*, 5 B. & S. 970; 34 L. J. Q. B. 265. And where work is ordered to be done which is lawful in itself, but from which in the natural course of things injurious consequences are likely to arise, the employer must see that means are adopted to prevent such consequences. He cannot relieve himself of his liability by employing someone else to do what is necessary to prevent the act he had ordered to be done from becoming wrongful: *Bower v. Peate*, 1 Q. B. D. 321; 45 L. J. Q. B. 446; 35 L. T. (N.S.) 321; *Angus v. Dalton*, 6 App. Cas. 740; 50 L. J. Q. B. 689; 44 L. T. (N.S.) 484; 30 W. R. 191. And when persons are incorporated by statute for a particular purpose, and have full powers given them to effect that purpose, if the effecting of it may occasion (not only in the course of originally executing the necessary works for the required purpose, but at recurring intervals afterwards) inconvenience or injury to others, they may be treated as under an obligation to take, from time to time, measures to prevent the occurrence of such inconvenience and injury: *Geddis v. Bann Reservoir (Proprietors of)*, 3 App. Cas. 430. Of course, a public board is not answerable for damage which results from the negligence of the party injured, or of some other person independent of the public body, or acting contrary to or beyond their directions (see *Holden v. Liverpool New Gas Company*, 3 C. B. 1); nor for the act of their officer or agent done without their knowledge, and beyond the scope of their employment: *Bolingbroke v. Swindon Local Board*, L. R. 9 C. P. 575; 43 L. J. C. P. 287; 30 L. T. (N.S.) 723; 23 W. R. 47. In that case a local board, being in occupation of a sewage farm, had given to B. plenary powers for the management of such farm in the most beneficial manner. A ditch ran between the farm and the land of the plaintiff. With a view to rendering such ditch more capable of carrying off the drainage from the farm, B. wrongfully went upon the plaintiff's land, and pared away his side of the ditch, and cut down so much of the brushwood and underwood on the plaintiff's side as impeded the flow of drainage along the ditch:—

Held, that the acts so done by B. were not within the scope of his employment, and consequently that the local board were not liable for them at the suit of the plaintiff, there being no implied authority from the board to do them. And see *Charleston v. London Tramways Company*, 36 W. R. 367.

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Note.

D. contracted with the defendants, an urban authority, to supply by the day a driver and horse to drive and draw a watering cart belonging to the defendants. The driver was employed and paid by D., and was not under the defendant's direction and control otherwise than that the defendants' inspector directed him what streets to water. In an action to recover damages for injuries caused by the negligent conduct of the driver whilst in charge of his cart, it was held (distinguishing *Quarman v. Burnett*, 6 M. & W. 499, and *Rourke v. White Moss Colliery Company*, 2 C. P. D. 205), that the defendants were not liable: *Jones v. The Corporation of Liverpool*, 14 Q. B. D. 890; 54 L. J. Q. B. 345; 33 W. R. 551; 49 J. P. 311.

Neither are a local board responsible for accidents arising out of extraordinary cases, where all reasonable care has been taken to prevent such as would arise from ordinary cases. See *Blyth v. Birmingham Waterworks Company*, 11 Ex. 781; 2 Jnr. (N.S.) 333; 25 L. J. Ex. 212; 26 L. T. (o.s.) 261; 20 J. P. 247. As to the precautions which public bodies are required by law to take to prevent injury from the exercise of their powers, reference may be made to *Great Western Railway of Canada v. Braid*, 1 Moo. P. C. (N.S.) 101; *Biscoe v. Great Eastern Railway Company*, L. R. 16 Eq. 636; 21 W. R. 902.

The police authorities of a town in Scotland had opened the manhole of a sewer in the middle of a thoroughfare to clean the sewer. They had set up a winch over the hole, and had protected three sides of it. Two men were at work. A boy of nine years running along the street, and looking over his shoulder, fell into the hole. It was held that the police authorities were not liable, as they were doing an ordinary act in a proper way with sufficient precautions: *Adams v. Aberdeen Magistrates*, 11 Ct. of Sess. Cas., 4th series, 852.

When a public board let the navigation of a river and omitted to give notice to the lessee to repair a lock, and in consequence of such want of repair a bargeowner sustained loss, the board were held not to be liable, as the loss did not necessarily result from the omission: *Walker v. Goe*, 4 H. & N. 350; 28 L. J. Ex. 184. And where a corporation were empowered to improve the navigation of a river, and for that purpose erected stanchions, which being accompanied with the accumulation of filth and the growth of weeds, caused the river to over-

SECT. 124. flow and damage the lands adjoining, it was held that the riparian

Note. owner had no ground of action against the corporation, though he might have a ground of compensation under a section of this Act: *Cracknell v. Thetford (Mayor of)*, L. R. 4 C. P. 629.

The principle on which a private person or company is liable for damages occasioned by the neglect of servants, applies to a corporation which has been entrusted by statute to perform certain works and to receive tolls for the use of those works, although the tolls, unlike the tolls received by the private person or company, are not applicable to the use of the individual corporators or to that of the corporation, but are devoted to the maintenance of the works: *Mersey Docks and Harbour Trustees v. Gibbs*, L. R. 1 H. L. 93; 35 L. J. Ex. 225; 14 W. R. 872; 30 J. P. 467. Therefore conservators of a river having in part constructed and in part acquired a towing path, and having taken tolls for the use of it, were held liable for damages caused by its defective condition: *Winch v. Thames (Conservators of)*, L. R. 9 C. P. 378; 43 L. J. C. P. 167; 31 L. T. (N.S.) 128; 22 W. R. 879.

When public commissioners are guilty of negligence in the management of their works, and certain persons, to avert or remove damage which would result from such negligence to themselves, do an act which would damage a third person, he has a right of action against the commissioners whose negligence was the primary cause of the damage: *Collins v. Middle Level Commissioners*, L. R. 4 C. P. 279; 38 L. J. C. P. 236. See also *Harrison v. Great Northern Railway Company*, 3 H. & C. 231; 33 L. J. Ex. 266; *Burrows v. March Gas Company*, L. R. 7 Ex. 96; 41 L. J. Ex. 46.

It is right here to observe that a local authority will be liable for breaches of contract and for civil injuries to the same extent as any other corporate body. Hence in *Higgs v. Godwin*, 27 L. J. Q. B. 421; 31 L. T. (o.s.) 196, an action was brought against a local board for infringing a patent.

As regards other proceedings against local authorities, it may be stated that it was held that an action on the case was not maintainable against a local board for not paying the salary of an organist which salary was claimed as payable out of certain moneys of which the local board had become trustees. It appeared that the board had funds applicable to the payment of the salary, but it was held that in the absence of a specific appropriation of a part of the fund to the plaintiff no action at law would lie, the proper remedy being in equity, or possibly by *mandamus*: *Edwards v. Lowndes*, 1 E. & B. 81; 22 L. J. Q. B. 104; 17 Jur. 412.

In order to maintain an action against a local board for payment of

claims upon them payable out of particular funds, it must be shown SECT. 124. that they are in possession of those funds, and that they are available for payment of the claim. See *Pardoe v. Price*, 16 M. & W. 451; 16 L. J. Ex. 192; *Lloyd v. Burrup*, L. R. 4 Ex. 63; 38 L. J. Ex. 25; 19 L. T. (N.S.) 696. But in a case where a local board in default of owners to execute works, contracted with a third person to execute them, and the contract contained a provision to pay him when the money was collected from the owners, it was held that he was entitled to recover for the work done by him, though the money could not be recovered from the owners by reason of a defect in the notices: *Worthington v. Sudlow*, 31 L. J. Q. B. 131; 26 J. P. 453.

Where a vestry took possession of highways in respect of which a rent was payable to the representatives of a former owner of the land, they were held liable to an action for non-payment of the rent: *Sanson v. Shoreditch (Vestry of)*, 38 L. J. C. P. 286.

It becomes necessary to consider how the judgment recovered against a sanitary authority can be enforced. Where a judgment was recovered against the clerk of certain commissioners under an Improvement Act, and the sheriff had on a *fi. fa.* seized certain goods of the commissioners vested in them for public purposes, the Court of Exchequer refused to set aside the writ of *fi. fa.* and subsequent proceedings, but left the parties to bring an action of trespass, or to take such other remedy as they might think proper: *Saunders v. Slack*, 11 L. T. (N.S.) 484. This case was approved of in *Worrall Waterworks Company v. Lloyd*, L. R. 1 C. P. 719. There land which had been conveyed to a local board for the purposes of the Public Health Acts was used as a reservoir for the supply of water to the district of the local board. A judgment having been obtained against the local board in the name of their clerk, it was held that the land was liable to be taken under a writ of *c legit*. WILLES, J., said: "We have been anticipated by the Exchequer in *Saunders v. Slack*, and by the decision of the House of Lords in the case of *Mersey Dock Trustees v. Gibbs, supra*. It has been said that the House of Lords only referred to the right of the plaintiff to judgment, and not to the execution; but the principle upon which their decision rests is equally applicable to the right to execution as to judgment, and it was so understood in *Coe v. Wise*, L. R. 1 Q. B. 711." If there be no property of the local board available to satisfy the debt, the proper remedy is by *mandamus* to the authority to pay or satisfy the judgment out of moneys in their hands or rates which they can make. See also *Webb v. Herne Bay Commissioners*, L. R. 5 Q. B. 642; 39 L. J. Q. B. 221, where it was held that a *mandamus* might be prayed for to compel the board to pay the amount due out of moneys

SECT. 124. in their hands without making a rate for the purpose; and *Bush v. Beavan*, 1 H. & C. 500; 32 L. J. Ex. 54, where a *mandamus* was

Note. refused to enforce payment of a debt against commissioners, the debt not being a charge on the local rate, but due from the commissioners personally. The *mandamus* may be claimed in the same action as that to establish the debt: *Ward v. Lowndes*, 1 E. & E. 940; 22 L. J. Q. B. 40; 6 Jur. (N.S.) 247; 1 L. T. (N.S.) 268.

When the local authority enter into any contract, they will be liable to the contractor in an action on the contract if it is broken by them, and he will not be compelled to proceed in equity, or by *mandamus*, in the first place, or in an action on the case for the recovery of his damages: *Nowell v. Worcester (Mayor of)*, 9 Ex. 457; 23 L. J. Ex. 139; 2 C. L. R. 981; 18 Jnr. 64; *Payne v. Brecon (Mayor of)*, 3 H. & N. 572; 27 L. J. Ex. 495; 22 J. P. 690. And the judgment may be enforced by *mandamus*.

Where a local authority enter into a contract *ultra vires*, and cannot pay the contractor out of their funds, the individual members of the board are not personally liable on that contract: *Bailey v. Cuckson*, 32 L. T. (O.S.) 124; 7 W. R. 16. Whether they can be made liable as on a personal guarantee may be a question; but according to *Mount Stephen v. Lakeman*, L. R. 5 Q. B. 613, no action would be maintainable unless there was a written document in conformity with the Statute of Frauds. This decision was reversed in error upon a different view of the facts taken by the Court of Error: L. R. 7 Q. B. 196; 41 L. J. Q. B. 67; and the House of Lords confirmed the judgment of the Court of Error, holding that there was a personal pledge of credit: L. R. 7 H. L. 17; 43 L. J. Q. B. 188; 30 L. T. (N.S.) 437; 22 W. R. 617. As to the liability of individual members of a board for an illegal act committed by their officer, but by their direction, see *Mill v. Hawker*, *ante*, p. 210. In a recent case a metropolitan vestry had passed resolutions authorising certain illegal expenditure out of the rates. An action was brought by the Attorney-General at the relation of a ratepayer, and by the ratepayer as plaintiff against the vestry and six of the vestrymen who had voted for the resolution, to restrain the proposed application out of the rates. It was not alleged that any of the rates had been applied as proposed; it was merely alleged that the vestry intended so to apply the rates. It was held that the individual defendants were not properly made parties for the purpose of obtaining costs from them, and that the action must be dismissed as against them: *Attorney-General v. Bermondsey (Vestry of)*, 23 Ch. D. 60; 52 L. J. Ch. 567; 48 L. T. (N.S.) 445; 31 W. R. 463; 47 J. P. 453. It would seem from this case that if the money had in fact been paid

for the illegal purpose, the individual members might have been compelled to recoup the money and pay the costs, according to *Attorney-General v. Compton*, 1 Y. & C. 417. SECT. 124. Note.

When a local board were defendants in a suit in Chancery, and no answer was put in to the bill, all the members of the board having resigned, the Vice-Chancellor allowed the plaintiff to take a decree in the terms of the petition: *Hardinge v. Southborough Local Board*, 32 L. T. (n.s.) 250.

The auditors of a district board or vestry have power to disallow and surcharge under 18 & 19 Vict. c. 120, s. 195, but the allowance, disallowance, or surcharge may be questioned by *certiorari* in the Queen's Bench Division under 25 & 26 Vict. c. 102, s. 38.

The accounts of the Woolwich Local Board are audited by the district auditor under sections 245—7 of the Public Health Act, 1875, now applied to that district by section 102, *ante*, p. 172, and Schedule 2, *post*.

125. Any person who deems himself aggrieved by any conviction or order made by a court of summary jurisdiction on determining any information or complaint under this Act may, save as otherwise provided in this Act, appeal therefrom to a court of quarter sessions. Appeal to quarter sessions.

In general an appeal lies to quarter sessions against any conviction or order of a court of summary jurisdiction under this Act. But to this there are some exceptions. Thus, there is no appeal against an nuisance order unless it is or includes a prohibition or closing order, or requires the execution of structural works. See section 6, sub-section (2), *ante*, p. 23.

It should be borne in mind that when the proceedings are criminal—that is, when they are instituted to procure the punishment of a person for an offence by fine or imprisonment, and the summons is dismissed, there is no appeal under this section: *Reg. v. Middlesex J.J.*, 45 J. P. 420; *Reg. v. London J.J.*, 25 Q. B. D. 357; 55 J. P. 56.

126. Any appeal to the county council against a notice or act of a sanitary authority under this Act shall be as to conducted in accordance with sections two hundred and eleven and two hundred and twelve of the Metropolis council. Provision appeals to county council.

SECT. 126. Management Act, 1855, which sections, as modified by
 18 & 19 Vict. c. 120. the Local Government Act, 1888, are set out in the First
 Schedule to this Act.

See the First Schedule, *post*.

There is no appeal from the Commissioners of Sewers to the county
 council. See section 133, *post*.

Notices.

Authenti-
cation of
notices, &c.

127.—(1) Notices, orders, and other such documents under this Act shall be in writing; and notices and documents other than orders, when issued by the county council or a sanitary authority, shall be sufficiently authenticated if signed by their clerk or by the officer by whom the same are given or served.

This section does not enable the clerk or other officer to give any notice, &c., without authority. It only provides that a notice given by direction of the sanitary authority may be authenticated by the signature of the clerk or other officer. Unless his signature is admitted it will have to be proved in any legal proceedings founded upon the notice or other document.

A notice will apparently be sufficiently signed to satisfy this section if it is impressed by a rubber stamp. See *Osgood v. Nelson*, L. R. 5 H. L. 648; 41 L. J. Q. B. 329; *Blades v. Lawrence*, L. R. 9 Q. B. 374; 43 L. J. Q. B. 133; 30 L. T. (N.S.) 378; 22 W. R. 643. In some cases the printed name of the clerk may be a sufficient signature. See *Brydges v. Dix*, 7 T. L. R. 215; and compare *Reg. v. Cowper*, 24 Q. B. D. 533.

(2) Orders shall be under the seal of the council or authority duly authenticated.

Service of
notices.

128.—(1) Any notice, order, or other document required or authorised to be served under this Act may be served by delivering the same or a true copy thereof either to or at the usual or last known residence in England of the person to whom it is addressed, or, where addressed to the owner or occupier of premises, then to

Notices.

some person on the premises, or, if there is no person on SECT. 128. the premises who can be so served, then by fixing the same or a true copy thereof on some conspicuous part of the premises ; it may also be served by sending the same or a true copy thereof by post addressed to a person at such residence or premises as above mentioned.

(a) This word appears to signify the place of abode, but it is not free from ambiguity in its application. In *Blackwell v. England*, 27 L. J. Q. B. 124, the court said that the meaning of the word "residence" had to be determined with reference to the purpose of the statute in which it was used. Therefore, although for the purposes of the Poor Law Acts it meant the place where a person lived with his family, yet for the purposes of a Bill of Sale Act, which required the residence of an attesting witness to be stated, a business address was a sufficient statement of the residence. And see *Mason v. Bibby, infra*. And a person may have more than one residence : thus, he may have houses in different places, each of which may be called his residence : *Walcot v. Boyfield*, 1 Kay 534 ; 18 Jur. 570.

(b) The expressions "owner" and "premises" are defined in section 141, *post*.

(c) The 11 & 12 Vict. c. 63, s. 150, provided that in all cases in which any notice was required to be given to the owner or occupier of any premises, it should be sufficient to address the notice to them by the description of the "owner" or "occupier" of the premises, and that the notice should be served either personally or by delivering the same to some inmate of the owner or occupier's place of abode. It was held that service of a notice by delivering it to the clerk of an owner at his place of business was sufficient, the section being merely in aid of service of notices ; and per MARTIN, B., that the service was good under the section, a place of business being a place of abode and the clerk an inmate thereof : *Mason v. Bibby*, 2 H. & C. 881 ; 33 L. J. M. C. 105 ; 9 L. T. (N.S.) 692 ; 12 W. R. 382 ; 10 Jur. (N.S.) 519 ; 28 J. P. 121.

(2) Any notice required or authorised for the purposes of this Act to be served on a sanitary authority or on the county council shall be deemed to be duly served if in writing delivered at, or sent by post to, the office of the authority or council, addressed to such authority or council, or their clerk.

This is a new and useful provision.

SECT. 128. (3) Any notice by this Act required to be given to or served on the owner or occupier of any premises may be addressed by the description of the "owner" or "occupier" of the premises (naming them) in respect of which the notice is given or served, without further name or description.

A similar provision occurs in section 267 of the Public Health Act, 1875.

It is worthy of notice that there is no provision for service on one of several joint owners: but perhaps this is unnecessary, having regard to section 120, *ante*, p. 192.

Miscellaneous Provisions.
Inquiries by Local Government Board. 38 & 39 Vict. c. 55.

Miscellaneous Provisions.

129. Sections two hundred and ninety-three to two hundred and ninety-six of the Public Health Act, 1875, which are set forth in the First Schedule to this Act, shall apply to all inquiries which the Local Government Board may make in pursuance of or for the purposes of this Act.

See these sections and the notes thereto, Schedule 1, *post*.

Forms. 42 & 43 Vict. c. 49.

130. The forms in the Third Schedule to this Act, or forms to the like effect, varied as circumstances may require, may, unless other forms are prescribed under the Summary Jurisdiction Act, 1879, be used and shall be sufficient for all purposes.

The forms in the schedule are few in number. They are for the most part adaptations of the forms contained in the Public Health Act, 1875. With regard to such of them as relate to proceedings before a court of summary jurisdiction, no attempt has been made to adapt them to the new procedure under the Summary Jurisdiction Act, 1879, and they will be found in practice to require considerable modification. The text seems to contemplate that other forms may be prescribed under the Summary Jurisdiction Act, 1879.

131. Where the whole or any part of any expense incurred by the Lewisham District Board of Works, in pursuance of the epidemic regulations, may, under this Act, be repaid to that board out of the Metropolitan Common Poor Fund, the amount to be so repaid when ascertained shall be apportioned between the hamlet of Penge and the remainder of the Lewisham district in proportion to the rateable value of such hamlet and remainder, according to the valuation lists in force at the date of the apportionment, and the amount apportioned to the hamlet of Penge shall be repaid to the district board by the board of guardians for the Croydon Union out of the common fund of the union, in pursuance of a precept of the Local Government Board to be issued after the like proceedings and in the like manner as in the case of a repayment from the Metropolitan Common Poor Fund; and the amount apportioned to the remainder of the Lewisham district shall be repaid to the district board out of the Metropolitan Common Poor Fund.

Provision for apportionment of certain expenses between hamlet of Penge and remainder of Lewisham district.

The expenses above referred to as payable out of the Metropolitan Common Poor Fund are payable under section 87, *ante*, p. 146.

The hamlet of Penge, though part of the Lewisham district, is in the Croydon Union, and does not contribute to the Metropolitan Common Poor Fund. Hence the necessity for the above provision.

132. This Act shall (save as otherwise expressly provided) extend only to London:

Extent of Act.

Provided that this Act shall extend to places elsewhere so far as is necessary for giving effect to any provisions thereof in their application to London and to any places to which such provisions are expressly applied.

London means the administrative county of London. See section 141, *post*. See also the note to section 99, *ante*, p. 166.

The proviso has reference to such cases as those dealt with in section 14, *ante*, p. 27, where a nuisance in a sanitary district is caused by

SECT. 132. some act committed outside the district, and possibly outside London.

Note. See also section 21, sub-section (4), *ante.* p. 42, and the sections extending the provisions of the Act to the port of London.

City of London.

Appli-
cation of
Act to
city.

City of London.

133. In the application of this Act to the City of London the following modifications shall be made :

- (a.) There shall be no appeal under this Act from the Commissioners of Sewers to the county council :
- (b.) The bye-laws made by the county council under this Act shall not extend to the city :
- (c.) The county council shall not have power under this Act to require the Commissioners of Sewers to provide and maintain a building for *post-mortem* examinations :
- (d.) The powers of the county council under this Act to proceed in case of default of a sanitary authority shall not extend to the Commissioners of Sewers :

Appeal lies to the county council from the sanitary authority under sections 37, 41, 43.

Bye-laws may be made by the county council under sections 16, 19, 28, 39.

The county council may require a sanitary authority to provide a room for holding *post-mortem* examinations under section 90.

The power of the county council to proceed in default of a sanitary authority is given by section 100. See the next section.

Power of
city police
to proceed
in certain
cases
against
nuisancees.

134. Where it is proved to the satisfaction of the Local Government Board that the Commissioners of Sewers have made default in doing their duty in relation to nuisances under this Act, the board may authorise any officer of police of the City of London to institute any proceeding which the commissioners might institute with regard to such nuisances, and that officer may recover from the commissioners in a summary manner or in the county court or High Court any expenses incurred by him, and

not paid by the person proceeded against. Such officer ^{SECT. 134.} of police shall not for the purpose of this section be at liberty to enter any house or part of a house used as the dwelling of any person without either such person's consent, or the warrant of a justice.

This section is taken from 29 & 30 Vict. c. 90, s. 16, and 37 & 38 Vict. c. 89, s. 19, but is now limited to the City of London.

"In a summary manner" means in manner provided by the Summary Jurisdiction Acts (42 & 43 Vict. c. 49), s. 41, sub-section (3).

The expression "house" is defined by section 141, *post*. A warrant will not, apparently, be necessary to enable the officer to enter premises as provided by this Act, except when the premises are a house or part of a house used as a dwelling.

135.—(1) Where complaint is made to the Local Proeedings on Government Board that the Commissioners of Sewers have made default in executing or enforcing any provisions of this Act, the Local Government Board, if satisfied, after due inquiry that those commissioners have been guilty of the alleged default, shall make an order limiting the time for the performance of their duty in the matter of such complaint. If the duty is not performed by the time limited in the order, the order may be enforced by writ of *mandamus*, or the Local Government Board may appoint some person to perform the duty, and shall by order direct that the expenses of performing the same, together with a reasonable remuneration to the person appointed for superintending the [performance, and amounting to a sum specified in the order, together with the costs of the proceedings, shall be paid by the Commissioners of Sewers, and any order made for the payment of such expenses and costs may be removed into the High Court, and enforced as an order of that court.

This section makes provision for defaults made by the Commissioners of Sewers in the execution of the Act within the City of London. It

SECT. 135. differs from the corresponding provision in section 101, chiefly in this respect, that a person other than the county council is to be appointed to perform the duty in respect of which default has been made.

Note. As to local inquiries by the Local Government Board, see section 129, *post.*

An order of the High Court is enforceable like a judgment ; an order against a corporation may be enforced by sequestration or attachment of the officers thereof: Rules of the Supreme Court, Order 42, rr. 24, 31.

(2) Any person so appointed shall, in the performance and for the purposes of the said duty, be invested with all the powers of the Commissioners of Sewers other than (save as hereinafter provided) the powers of levying rates ; and the Local Government Board may by order change any person so appointed.

As to the power to levy rates, see sub-section (4), *infra.*

(3) Any sum specified in an order of the Local Government Board for payment of the expenses of performing the duty of the Commissioners of Sewers, together with the costs of the proceedings, shall be deemed to be expenses properly incurred by those commissioners, and to be a debt due from them, and payable out of any moneys in their hands or the hands of their officers, or out of any rate applicable to the payment of any expenses properly incurred by the commissioners (which rate is in this section referred to as "the local rate"). If the commissioners refuse to pay any such debt for a period of fourteen days after demand, the Local Government Board may by order empower any person to levy, by and out of the local rate, such sum (to be specified in the order) as may, in the opinion of the Local Government Board, be sufficient to defray the debt, and all expenses incurred in consequence of the non-payment thereof.

The rates applicable to the payment of expenses under this Act are the sewers rate and the consolidated rate. See section 103, *ante.*

(4) Any person so empowered shall have the same SECT. 135. powers of levying the local rate, and requiring all officers of the Commissioners of Sewers to pay over any money in their hands, as the commissioners would have in the case of expenses legally payable out of a local rate to be raised by them ; and the said person, after repaying all sums of money so due in respect of the order, shall pay the surplus, if any (the amount to be ascertained by the Local Government Board), to or to the order of the Commissioners of Sewers.

The local rate is defined by the preceding sub-section.

The Local Government Board may give a certificate of the expenses incurred under the next sub-section, and their certificate will be conclusive.

(5) The Local Government Board may certify the amount of expenses incurred, or an estimate of the expenses about to be incurred, by any person appointed by the board under this section to perform the duty of the commissioners ; also the amount of any loan required to defray any expenses so incurred, or estimated as about to be incurred ; and the certificate of the board shall be conclusive as to all matters to which it relates.

The raising of a loan when required is provided for by the next sub-section.

(6) Whenever the Local Government Board so certifies a loan to be required, that board, or the person so appointed, may, by any instrument duly executed, charge the local rate with the repayment of the principal and interest due in respect of the loan, and every such charge shall have the same effect as if the Commissioners of Sewers were empowered to raise the loan on the security of the local rate, and had duly executed an instrument charging the same on that rate.

The local rate is defined by sub-section (3), *supra*. The person appointed will have the same power to raise a loan and charge it on the

SECT. 135. rates as the commissioners would themselves have under their Acts
 —————
 Note. See the notes to section 103, *ante*, p. 173.

(7) Any principal money or interest for the time being due in respect of a loan under this section shall be a debt due from the Commissioners of Sewers, and, in addition to any other remedies, may be recovered in the manner in which a debt due from those commissioners may be recovered in pursuance of this section.

This seems to refer to sub-section (3), *supra*, under which the sums due are payable out of moneys in the hands of the Commissioners or their officers, or out of the sewers rate or consolidated rate. The ordinary remedy for non-payment of an instalment or interest of a loan is by appointment of a receiver. Under the provision in the text the debt will be recoverable by action.

(8) The surplus (if any) of any such loan, after payment of the expenses aforesaid, shall, on the amount thereof being certified by the Local Government Board, be paid to or to the order of the Commissioners of Sewers.

The surplus of the loan is the amount left after payment of the expenses of performing the duties in respect of which default has been made. It may apparently be used by the commissioners for current expenses ; at least, there is no restriction as to its application. It may, however, be set aside to repay the loan *pro tanto*.

(9) "Expenses," for the purposes of this section, shall include all sums payable under this section by or by the order of the Local Government Board, or the person appointed by that board.

The expression "expenses," therefore, includes the remuneration of the person appointed, and costs of such proceedings as are mentioned in sub-section (3), *supra*.

SECT. 136.

Saving Clauses.

Saving
Clauses.Saving for
water
rights.

136. Nothing in this Act shall be construed to authorise any sanitary authority to injuriously affect the navigation of any river or canal, or to divert or diminish any supply of water of right belonging to any river or canal; or to injuriously affect any reservoir, canal, river, or stream, or the feeders thereof, or the supply, quality, or fall of water, contained in any reservoir, canal, river, stream, or in the feeders thereof, in cases where any person would, if this Act had not been passed, have been entitled by law to prevent or be relieved against the injuriously affecting of such reservoir, canal, river, stream, feeders, or such supply, quality, or fall of water, unless the sanitary authority first obtain the consent in writing of the person so entitled as aforesaid.

This section replaces 18 & 19 Vict. c. 121, sub-sections 44, 45, and corresponds to section 332 of the Public Health Act, 1875.

An action will lie for an injunction and for damages at the suit of any person aggrieved by an infringement of this section: *Reg v. Darlington Local Board*, 6 B. & S. 562; 33 L. J. Q. B. 305; 13 W. R. 789; 29 J. P. 419.

The application of this section in London must necessarily be very limited.

137. Nothing in this Act shall affect any power of the conservators of the Thames under the Thames Navigation Act, 1870, or otherwise.

Saving for
Thames
Conser-
vators.

33 & 34

Vict.
c. exlix.Powers of
Act to be
cumula-
tive.

138. All powers, rights, and remedies given by this Act shall be in addition to and not in derogation of any other powers, rights, and remedies conferred by any Act of Parliament, law, or custom, and all such other powers, rights, and remedies may be exercised and put in force in the same manner and by the same authority as if this Act had not passed.

This section replaces 18 & 19 Vict. c. 121, s. 43, and 29 & 30 Vict.

SECT. 138. c. 90, s. 55. Similar provisions are contained in sections 111, 341, of
 — the Public Health Act, 1875 ; and as to the effect of these, see *Lea v. Facey*, 17 Q. B. D. 139 ; 55 L. J. Q. B. 371 ; 50 J. P. 295.

Temporary Provisions.

Existing officers.

Temporary Provisions.

139.—(1) In the case of any medical officer of health or inspector of nuisances who holds office under an appointment made before the commencement of this Act (in this section referred to as an existing officer), the provisions of this Act with respect to his salary and tenure of office shall be qualified as follows; that is to say,—

- (a.) Where a portion of his salary is paid by the county council out of the Exchequer Contribution Account, the Local Government Board shall have the same powers as they have in the case of a district medical officer of a poor law union with regard to the qualification, appointment, duties, salary, and tenure of office of such officer :
- (b.) In any other case the Local Government Board may prescribe the qualification and duties of a medical officer of health :
- (c.) Subject to the said powers of the Local Government Board, the sanitary authority may make such payments as they think fit on account of the remuneration and expenses of such officer, and every such officer shall be removable by the sanitary authority at their pleasure :
- (d.) Every such inspector of nuisances shall be called a sanitary inspector.

The provisions of the Act as to the salary and tenure of office of a medical officer of health and inspector of nuisances are contained in section 108, *ante*, p. 179. The effect of the saving is, that where part of the officer's salary is paid by the county council (see the note to section

108), his qualification, &c., will be prescribed by the order of the Local SECT. 139. Government Board. Where no part of the salary is so paid, the Local Government Board may, in the case of a medical officer, prescribe his qualification and duties, while his salary will be fixed by the sanitary authority, and he will hold office at pleasure ; in the case of a sanitary inspector, the Local Government Board will have no powers of any kind, and he also will hold office at the pleasure of the sanitary authority.

Note.

(2) The requirements of this Act with respect to the qualification of medical officers shall not apply to medical officers appointed before the first day of January, one thousand eight hundred and ninety-two ; and this Act shall not prevent any person who, at the commencement of this Act, is both a district medical officer of a union and a medical officer of health from continuing to hold those appointments in like manner as if this Act had not been passed.

The requirements of the Act with respect to the qualification of medical officers of health are contained in section 108, *ante*, p. 179.

The Act itself does not forbid a person holding both the offices of district medical officer of a union and medical officer of health.

140. Those members of the Woolwich Local Board whose term of office, if this Act had not been passed, would have expired in the month of August in any year, shall go out of office on the fifteenth day of April in the same year.

Term of office of existing members of Woolwich Board.

This alteration in the date is rendered necessary by the application to the Woolwich Local Board of the Second Schedule to the Public Health Act, 1875. See section 102, *ante*, p. 172. The members of the Woolwich Local Board will now be elected and hold office at the same times as other local boards throughout the country. See the Public Health Act, 1875, Schedule 2, r. 55.

SECT. 141.

Interpre-
tion.Interpre-
tation of
terms.

Interpretation.

141. In this Act, unless the context otherwise requires,—

The expression “London” means the administrative county of London :

The expression “county council” means the London County Council :

The administrative county of London is the area under the jurisdiction of the London County Council. It includes the City of London and the parishes and places mentioned in Schedules A., B., and C., to the 18 & 19 Vict. c. 120, as amended by subsequent Acts. See the Local Government Act, 1888, ss. 40, 100. See also the notes to section 99, *ante*, p. 166.

The expression “the Metropolitan Asylum Managers” means the Managers of the Metropolitan Asylum district :

See the note to section 79, *ante*, p. 139.

The expression “street” includes any highway, and any public bridge, and any road, lane, footway, square, court, alley, or passage, whether a thoroughfare or not, and whether or not there are houses in such street :

The concluding words of this definition are new. They do not occur in 18 & 19 Vict. c. 120, s. 250, nor in the Public Health Act, 1875. They are obviously inserted with the view of avoiding the many difficulties which have arisen in determining whether a place is a street where there are no buildings or only a limited number. But the definition does not really remove the difficulty for the question has always been whether the word had the extended meaning assigned to it by the interpretation clause or only its ordinary meaning of a roadway with houses. This difficulty may still arise under the present Act, as the following cases decided with reference to the Public Health Act, 1875, and other statutes will serve to show. In *Robinson v. Barto Local Board*, 8 App. Cas. 798 ; 53 L. J. Ch. 226 ; 50 L. T. (N.S.) 57 ; 32 W. R. 249 ; 48 J. P. 276, Lord SELBORNE said :—“An interpretation clause of this kind is not meant to prevent the word receiving

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HYGIENE

its ordinary, popular, and natural sense whenever ~~that~~ would be SECT. 11. properly applicable: but to enable the word ~~to be applied to the Act, when~~ there is nothing in the context or the ~~matter to the contrary,~~ Note to be applied to some things to which it would not ~~ordinarily~~ be applicable. I look upon this portion ~~of the interpretation clause~~ as meaning neither more nor less than this: ~~that the provisions contained~~ in the Act as to streets, whether new streets or old streets, shall, unless there be something in the subject-matter and the context to the contrary, be read as applicable to these different things. It is perfectly consistent with that, that they should be read as applicable, and should be applied to those things to which they in their natural sense apply, and which do not require any interpretation clause to bring them in; and in the natural and popular sense of the word *street*, or the words *new street*, I should certainly understand a roadway with buildings on each side (it is not necessary to say how far they must or may be continuous or discontinuous), and by *new street*, a place which before had not that character, but which, by the construction of buildings on each side, or possibly on one side, has acquired it." From this it will appear that the definition in the text does not invariably govern the meaning of the word *street* throughout the Public Health Acts, and it is important to distinguish the various meanings which have been assigned to the term in different sections.

In *Taylor v. The Corporation of Oldham*, 4 Ch. D. 395; 46 L. J. Ch. 105; 35 L. T. (N.S.) 696; 25 W. R. 178, JESSEL, M.R., held that the word *street* as used in section 16 of the Public Health Act, 1875, included private streets and roads; in fact, he decided that the word must be interpreted according to the extended meaning assigned to it by the above definition.

It has been expressly decided that *street* in section 149 of the Act of 1875 includes a country lane of which the herbage may be let. It is, therefore, used in its extended sense as here defined: *Corverdale v. Charlton*, 4 Q. B. D. 104; 48 L. J. Q. B. 128; 40 L. T. (N.S.) 88; 26 W. R. 687; 43 J. P. 268. And see to the same effect, *Nutter v. Acerington Local Board*, 4 Q. B. D. 375; 48 L. J. Q. B. 487; 40 L. T. (N.S.) 802; 43 J. P. 635, decided on the corresponding section of 11 & 12 Vict. c. 63. In *Robinson v. Barton Local Board, supra*, Lord SELBORNE said:—"In section 149 of this Act, and the sections which follow it, the word *street* manifestly has the same sense as when we speak of a man going out of his house into the street, or carriages passing along the street. There the public highway, whether footway or carriageway, is alone intended, and the houses on either side are certainly not included in that case in the street. And I should be

SECT. 141 myself inclined to say that this would *primâ facie* be the sense of the word *street* when it is used in a context which contains no indication of anything more.

Note.

Section 150 of the same Act is the complement of section 149, and it would seem that the word *street* as therein used has the same meaning. That the word means the roadway as distinguished from the road with the houses is clear, and the *dictum* of Lord SELBORNE, already quoted, applies to section 150, as well as to section 149. But the cases have not consistently decided whether the word is used in its natural and ordinary sense of a roadway with houses on both sides or in the wider meaning assigned to it by the definition : *Maude v. Baildon Local Board*, 10 Q. B. D. 394 ; 48 L. T. (N.S.) 874 ; 47 J. P. 644, apparently decides that the word *street* is used (section 150) in its natural sense as distinguished from its extended meaning. But in *Portsmouth (Mayor, &c., of) v. Smith*, 13 Q. B. D. 184 ; 53 L. J. Q. B. 92 ; 50 L. T. (N.S.) 308 ; 48 J. P. 404, the Master of the Rolls questioned that decision, pointing out that it has proceeded upon a mistaken view of *Reg. v. Dayman*, 7 E. & B. 672 ; 26 L. J. M. C. 128 ; 3 Jur. (N.S.) 744 ; 22 J. P. 39. And the court decided that the word *street* as used in section 53 of the Towns Improvement Act, 1847 (which corresponds to section 150 of the Act), had to be interpreted according to the definition, and therefore included a highway which was not a street in the ordinary sense. And in the case of *Midland Railway Company, v. Watton*, 16 Q. B. D. 30 ; 34 W. R. 524 ; 55 L. J. M. C. 99 ; 54 L. T. (N.S.) 482 ; 53 J. P. 405, the court assumed that in section 150 the word *street* was used as here defined. All doubt on this point, however, is now removed by the decision of the Court of Appeal in *Jowett v. Idle Local Board*, 36 W. R. 530 ; W. N. [1888] 87 ; 4 T. L. R. 442, where it was held that the word *street* in section 150 had the extended meaning assigned to it by the interpretation clause. And see *Richards v. Kessieck*, 57 L. J. M. C. 48 ; 59 L. T. (N.S.) 318 ; 52 J. P. 756 ; *Flinwick v. Croydon Rural Sanitary Authority*, L. R. [1891] 2 Q. B. 216 ; 55 J. P. 470 ; *Reg. v. Goole Local Board*, L. R. [1891] 2 Q. B. 212 ; 64 L. T. (N.S.) 595 ; 39 W. R. 608.

The word *street* in section 157 of the Public Health Act, 1875, is used with reference to *new streets*, and it was held to mean not only the roadway, but the roadway with the houses : *Baker v. The Mayor, &c., of Portsmouth*, 3 Ex. D. 4 ; 37 L. T. (N.S.) 381 ; 25 W. R. 677 ; affirmed in Court of Appeal, 3 Ex. D. 157 ; 47 L. J. Ex. 223 ; 37 L. T. (N.S.) 822 ; 26 W. R. 303 ; 42 J. P. 278. BRAMWELL, L.J., said :—“ I have come to the conclusion that the words of sub-section (1), ‘with respect to the level, width, and construction of

new streets, include the construction of the buildings, and the buildings themselves and front gardens, or whatever else is at the side of the roadway. I have come to this conclusion, not upon any authority, for I cannot see that any authority has any bearing upon the matter, except to show that the word *street* may have such a meaning, but because it is the right meaning of the words." A similar interpretation had been put upon the term as used in a local Act in *Galloway v. Corporation of London*, L. R. 1 H. L. 34; 35 L. J. Ch. 476; 12 Jur. (N.S.) 747; 14 L. T. (N.S.) 865; 30 J. P. 580, though it was said in another case decided upon a different section of the same Act, that this was not the *prima facie* meaning of the word, and it was accordingly held that the word as used in the last-mentioned section did not include the houses: *London, Chatham, and Dover Railway v. The Mayor, &c., of London*, 19 L. T. (N.S.) 250. In this connection may be mentioned cases decided upon such words as "houses within the street" (*Baddeley v. Gingell*, 1 Ex. 319; 11 J. P. 838); "houses forming the street" (*London School Board v. St. Mary, Islington*, 1 Q. B. D. 65; 45 L. J. M. C. 1; 33 L. T. (N.S.) 504; 24 W. R. 137; 40 J. P. 310). The case of *Baker v. The Mayor, &c., of Portsmouth* (*supra*) was approved by the House of Lords in *Robinson v. Barton Local Board* (*ante*, p. 230), where it was held that a country lane which had long been a *street* within the meaning of the definition might become a *new street* when houses came to be built by the sides of it. This had already been decided under the Metropolis Management Acts in *Pound v. The Plumstead Board of Works*, L. R. 7 Q. B. 183; 41 L. J. M. C. 51; 25 L. T. (N.S.) 461; 20 W. R. 117; 36 J. P. 468; *Dryden v. Overseers of Putney*, 1 Ex. D. 223; 34 L. T. (N.S.) 69; 40 J. P. 263.

It has been stated that the question whether a place is a *street* is a question of fact only after it has been determined in what sense the word *street* is used in the particular case under consideration. See *Eccles v. Wirral Union*, 16 Q. B. D. 107. But it is always a question of fact whether a place already a *street* as above defined has become a *new street*: *Reg. v. Dayman*, 7 E. & B. 672; 26 L. J. M. C. 128; 3 Jur. (N.S.) 744; 22 J. P. 39; *Reg. v. Fullford* (*supra*); *Reg. v. St. Mary, Islington*, E. B. & E. 743; 22 J. P. 383; *St. Mary, Islington, v. Barrett*, L. R. 9 Q. B. 278; 43 L. J. M. C. 85; 30 L. T. (N.S.) 11; 38 J. P. 198; *Dodd v. Vestry of St. Pancras*, 34 J. P. 517; *Bowles v. St. Mary, Islington*, 39 J. P. 757; *Reg. v. Shiel*, 50 L. T. (N.S.) 590. And see also *North London Railway Company v. St. Mary, Islington*, 27 L. T. (N.S.) 672; 21 W. R. 226; 37 J. P. 341; *Robinson v. Barton Local Board*, *supra*, and the cases cited in the notes to

Note.

SECT. 141. section 157. It is to be observed, however, that the court will inquire whether there has been *any* evidence to justify the finding of the justices: *Williams v. Powning*, 48 L. T. (N.S.) 672; *Midland Railway Company v. Watton*, 16 Q. B. D. 30; 34 W. R. 524; 55 L. J. M. C. 99; 54 L. T. (N.S.) 482; 53 J. P. 405.

Note.

The word *street* as used in the statutes incorporated by the Public Health Act, 1875, must in general be interpreted with reference to the definition of the term contained in these Acts respectively. Per Lord BLACKBURN in *The Mayor, &c., of Portsmouth v. Smith*, *ante*. And see *Curtis v. Emberry*, L. R. 7 Ex. 369; 42 L. J. M. C. 39; 21 W. R. 143; *Maddock v. Wallasey Local Board*, 55 L. J. Q. B. 267; 50 J. P. 404.

Neuman v. Baker, 8 C. B. (N.S.) 200, decided upon the Metropolitan Building Act, 1855, may be referred to, but it throws little, if any, light on the construction of the text.

The Metropolitan Board of Works v. Nathan, 54 L. T. (N.S.) 423, decided with reference to the same Act, shews that there may be a plan with houses on both sides which is, nevertheless, not laid out as a street within the meaning of that Act. In that case artizans' dwellings had been erected opening into an approach 100 feet long and 16 feet wide, entered from a public street through a gateway 10 feet wide, over which one of the buildings was carried. A roadway had previously existed on the site, with warehouses abutting thereon, and the gateway included the site of a former gateway which had been pulled down and altered to a greater width. The approach did not afford communication with any other public street, and was for the sole use and convenience of the tenants of the dwellings, to the exclusion of the public, no right of way having ever been dedicated to the public. It was held that the approach had not been laid out "as a street for foot traffic only."

The word *street* as used in the Metropolis Management Acts is defined in words similar to those in the text. For a case in which the term was interpreted with reference to the definition, see *Hampstead Vestry v. Hooper*, 15 Q. B. D. 652; 54 L. J. M. C. 147; 33 W. R. 903; 49 J. P. 741; and see *Hampstead Vestry v. Cotton*, *post*, p. 235.

A space of ground from 33 to 58 feet wide between the footway and the carriageway which had always been used by the inhabitants of the houses facing it for placing carriages on and the like, paying a small rent for such use to the owner of the soil, but which had always been used by the public for passage, subject only to the user by the inhabitants of the houses, was held not to be a part of a street, having been

only partially dedicated to the public: *Le Neve v. The Vestry of Mile End Old Town*, 27 L. J. Q. B. 208; 22 Jur. 660; 8 E. & B. 1054.

A *cul de sac* may be a street and public highway: *Souch v. The East London Railway Company*, L. R. 16 Eq. 105; 42 L. J. Ch. 477. So also a highway one end of which has been legally stopped: *Reg. v. Burney*, 39 J. P. 599. But a way ceases to be a public highway when the access to it at either end has become impossible by reason of the legal stopping up of ways leading to it: *Bailey v. Jamieson*, 1 C. P. D. 329; 34 L. T. (N.S.) 62; 24 W. R. 456; 40 J. P. 486.

Note.

The definition in the Public Health Act, 1875, includes a highway "not being a turnpike road."

"A turnpike road is a road across which turnpike gates are erected and tolls taken. . . . A turnpike road is a road having toll-gates or bars on it. . . . The distinctive mark of a turnpike road is the right of turning back any one who refuses to pay toll." Per Lord ABINGER, C.B., in *The Northam Bridge and Roads Company v. The London and Southampton Railway Company*, 6 M. & W., at p. 438. A footpath by the side of a turnpike road is part of the road: *Loveridge v. Hodson*, 2 B. & Ad. 602. This definition does not exclude a street which is also a turnpike road from the operation of other sections referring to streets, such as that vesting streets in local boards *Nutter v. The Accrington Local Board*, *supra* (per BRETT and COTTON, L.J.J., BRAMWELL, L.J., dissenting). "The interpretation clause is not restrictive. It does not say that the word *street* shall be confined to any highway not being a turnpike road, but that it shall apply to and include any highway not being a turnpike road," &c. That is enlarging, not restricting, the meaning of *street*; and in my opinion that which, independently of the Act of Parliament, in ordinary language is properly a street, does not cease to be so because it is part of a turnpike road." Per COTTON, L.J. But a private individual cannot, by making a road, erecting a gate, and charging tolls, make such road a turnpike road, and such a road is a street as above defined. *Austerberry v. The Corporation of Oldham*, 29 Ch. D. 750; 53 L. T. (N.S.) 543; 33 W. R. 807; 49 J. P. 532; *Midland Railway Company v. Watton*, *ante*, p. 234. The moment a road ceases to be a turnpike road it becomes a street within the above definition. Per Lord ESHER, M.R., in *Hampstead Vestry v. Cotton*, 16 Q. B. D. 483; 54 L. T. (N.S.) 441.

See *Arnell v. The Regent's Canal Company*, 12 C. B. 697; 14 C. B. 564, as to how far a canal bridge was brought within the terms of a local paving Act. When a street passes over a canal by a bridge, the bridge may for some purposes be deemed a street: per WIGHTMAN, J.,

SECT. 141. in *Beaver v. Manchester (Mayor, &c, of)*, 26 L. J. Q. B. 311. When a street is carried over a railway by means of a bridge, it is only the street and not the bridge which vests in the local authority: *Great Eastern Railway Company v. Hackney District Board of Works*, 8 App. Cas. 687; 52 L. J. M. C. 105; 49 L. T. (n.s.) 509; 48 J. P. 52, per Lord WATSON.

“The Act expressly calls places streets, whether they are public property or private property, and whether the public have any rights over them or have no rights over them.” Per JESSEL, M.R., in *Taylor v. Oldham (Corporation of)*, 4 Ch. D., at p. 407. And see *The Midland Railway Company v. Watton, supra*.

The expression “premises” includes messuages, buildings, lands, easements, and hereditaments of any tenure, whether open or enclosed, whether built on or not, and whether public or private, and whether maintained or not under statutory authority:

The Interpretation Act, 1889, provides that in every Act passed after the year 1850, the expression “land” shall, unless the contrary intention appears, include messuages, tenements and hereditaments, houses and buildings of any tenure.

The above definition of premises is wider than in any previous Act. Compare, for example, the definition in the Public Health Act, 1875.

It is not clear whether the term “premises” will include a church: see *Angell v. Paddington (Vestry of)*, 9 B. & S. 496; L. R. 3 Q. B. 714; 37 L. J. M. C. 171; 32 J. P. 742; *Wright v. Ingle*, 16 Q. B. D. 379; 55 L. J. M. C. 17; 34 W. R. 221.

As to what is a building, see the next note.

The expression “house” includes schools, also factories and other buildings in which persons are employed:

The expressions “building” and “house” respectively include the curtilage of a building or house, and include a building or house wholly or partly erected under statutory authority:

There is no definition of a “house” here, but only an extension of the term. Reference, therefore, may be made to the cases upon the parliamentary and municipal franchises, and upon settlement under the

poor law, for illustration of the word "housc." *Prima facie* a house SECT. 141, means a dwelling-house (*Surnam v. Darley*, 14 M. & W. 181); or a building calculated to be used as such (*Nunn v. Denton*, 8 Scott New Rep. 794; *Daniel v. Coulsting*, *ib.* 949); but the above interpretation extends the signification, and it is presumed that the term would signify any building in which persons are employed.

Note.

A church was held not to be a house in *Angell v. The Paddington Vestry*, L. R. 3 Q. B. 714; 37 L. J. M. C. 171. But this case had reference to the section of the Metropolis Management Act, 1862, which renders the owner of a house liable for the expenses of paving, &c. A church may be a house within the meaning of a bye-law or order prescribing a building line. Per MALINS, V.C., in *The Corporation of Folkestone v. Woodward*, L. R. 15 Eq. 159; 42 L. J. Ch. 782. A dissenting chapel was held to be a house within the meaning of the Metropolis Management Acts: *Caiger v. The Vestry of St. Mary, Islington*, 50 L. J. M. C. 59; 45 J. P. 570. The ground of this decision was that the chapel had not been consecrated, and thus dedicated to permanent and unalterable uses. This decision was followed in *Wright v. Ingle*, *post*, p. 238. There it was held that the word "housc" includes every building which is capable of being used as a human habitation. If a building, which is physically capable of being so used, is prevented, either by common law or by statute, from ever being put to such a use, it is exempted from the liability to contribute to the expense of paving a street in the metropolis. Thus, a consecrated church of the Established Church of England is exempted, because, by reason of its consecration, it becomes, by the common law, for ever incapable of being used as a habitation for man. But a leasehold chapel, vested in trustees, in trust to permit it to be used as a place of religious worship for Wesleyans, is a house, because, by the consent of the landlord, the trustees, and the *cestuis que trustent*, the trust may at any moment be put an end to.

The word "house" under the Public Health Act, 1848 (11 & 12 Vict. c. 63), was held to apply to a toll-house on a turnpike road: *The Trustees of Tunstall Turnpike Roads v. Lowndes*, 20 J. P. 374.

In *Hole v. The Commissioners of Milton*, 31 J. P. 804, it was held that buildings and yards used for purposes of business did not come within the description of "house" (for the purposes of a rate made under a local improvement Act), unless they were also within the curtilage of the house; but that gardens or orchards, subordinate to the occupation of the house as a residence, and occupied with the house as ancillary thereto, were so included within the word house. Therefore,

SECT. 141. a mill which opened into a yard adjoining a house, and which had internal communication with the outbuilding and house, was held to be part of the house and property included in the rates.

Note. A public-house was bounded on one side by a street, and in front by a vacant piece of ground not fenced off from the street, and separated from the house only by a narrow foot pavement, also without fence, which was ordinarily used by the public as a thoroughfare, though sometimes closed. The piece of land had been treated as passing to the lessee by every demise of the public-house since 1802; it was used by customers of the public-house, and it furnished the only means of approach to vehicles to the front door of the house. It was held that the piece of land came within the definition of a curtilage, and was part of the house within the meaning of the Lands Clauses Act, s. 92: *Marson v. The London, Chatham, and Dover Railway Company*, L. R. 6 Eq. 101, following *Lord Robert Grosvenor v. The Hampstead Junction Railway Company*, 1 De G. & J. 446. See also, as to the meaning of the word curtilage, *Asquith v. Griffin*, 48 J. P. 724.

In *Reg. v. J.J. of Warwickshire*, 17 L. T. (o.s.) 183, a coach-house and stables adjoining, and occupied with a dwelling-house, and forming part of the same premises, were held to be part of the "house" within the meaning of a local paving Act.

As to what constitutes a dwelling-house, see *Lawson v. Fraser*, 8 L. R. 1r. 55, where premises used as a corn store and kiln, part of which had formerly been used as a dwelling-house, and in which the respondent occasionally slept, were held to be a dwelling-house.

This Act contains no definition of a "building," which is a term of wider application than "house," and as it is used in this Act, the following cases may be referred to:—

A church is not for most purposes a house: *Angell v. Paddington (Vestry of)*, *ante*, p. 237. But a dissenting chapel is a house: *Caiger v. St. Mary, Islington (Vestry of)*, 50 L. J. M. C. 59; 45 J. P. 570; *Wright v. Ingle*, 16 Q. B. D. 379; 55 L. J. M. C. 17; 34 W. R. 221. But it has been held that a church may be a house within the meaning of a bye-law or order prescribing a building line: *Folkestone (Corporation of) v. Woodward*, L. R. 15 Eq. 159; 42 L. J. Ch. 782; and there can hardly be any doubt that a church would be held to be a house or building within the enactment in the text.

The word "building" is of wider signification than "house." See per TURNER, L.J., in *Grosvenor v. Hampstead Junction Railway Company*, 1 De G. & J. 446. The following decisions on the meaning of the term may be mentioned:—An open shop roofed in, connecting

the shop-front with a newly-built house, was held to be a building **SECT. 141.** within the meaning of an Act which prohibited the erection of buildings within a given distance from a roadway: *Reg. v. Gregory*, 3 L. J. M. C. 25. An erection made of wood, 30 feet long and 13 feet wide, was brought along the streets on wheels and put at the corner of a new street. It had spouts and a down corner, had a supply of gas, and was used as a hatcher's shop. It was held to be a new building: *Richardson v. Brown*, 49 J. P. 661. In *Stevens v. Gourlay*, 1 F. & F. 498; 29 L. J. C. P. 1; 1 L. T. (N.S.) 33; 7 C. B. (N.S.) 99, a wooden structure, intended to be used as a shop, of considerable size and likely to last for some time, resting on joists, but having no fastenings or foundations in masonry, and capable of being lifted from the ground, was held to be a building within the meaning of the Metropolitan Building Act. In *Poplar Board of Works v. Knight*, E. B. & E. 408; 28 L. J. M. C. 37; 5 Jir. (N.S.) 196, it was held that a house simply built on the surface of the ground, without any foundations in the ordinary sense, was, nevertheless, a building within 18 & 19 Vict. c. 120 s. 204, which prohibits the erection of buildings over sewers. In *Morrish v. Harris*, L. R. 1 C. P. 155, a structure built of stone, having four walls and a door, which was used by the tenant for keeping guano and other manures, which he used on adjoining land, was held to be a building within the Reform Act (2 Will. 4, c. 45, s. 27): but the term as used in that Act does not include everything which can be called a building: "it ought to be in some degree adapted both to be used by man, either for residence or for the industry to which the statute relates, and also to have the degree of durability which is included in the idea of building." Per ERLE, C.J., in *Powell v. Boraston*, 34 L. J. C. P. 73; 29 J. P. 550. In *Watson v. Cotton*, 17 L. J. C. P. 68, decided with reference to the same Act, a shed described as standing against a wooden palisade, but not fastened thereto, and consisting of six posts put into the ground supporting a tarpauling which formed the roof, one side being boarded up with boards nailed to the posts, the structure being used to put barrows and posts into, was held to be a building. But decisions upon these and similar statutes which confer qualifications to vote upon persons in occupation of buildings, cannot always be safely accepted as authorities for the construction of this Act. In *Bowes v. Low*, L. R. 5 Eq. 636, a viney attached to a wall was held to be a building. Whether a high wall would be so, *quare*. It was considered by Lord HATHERLEY, in *Child v. Douglas*, Kay, 560; 5 De G. M. & G. 739, that a dwarf wall forming a fence was not. See *Weston v. Arnold*, L. R. 8 Ch. 1084, in reference to a party-wall.

Note.

SECT. 141. A local Act prohibited the erection of all houses "and every other building" whatever within 30 feet of the centre of a road. Held by the Court of Session in Scotland (Lord YOUNG dissenting), that this prohibition did not apply to a parapet-wall, 1 foot in height, surrounded by a railing, 5 feet 3 inches in height: *Commissioners of Tarlick v. The Great Western Steam Laundry*, 13 Ct. of Sess. Cas. 4th series, 500. The erection of hoardings for advertisements was held to be a breach of a covenant not to erect or make any building or erection on certain demised premises: *Pocock v. Gilham*, 1 C. & E. 104. As to whether fence-walls of a canal being erected in a public place constituted a *public building*, see *Arnell v. The Regent's Canal Company*, 12 C. B. 697; 14 C. B. 564. A covenant in a purchase-deed provided that buildings should not be erected beyond a given line of frontage. It was held that bay-windows projecting beyond the line, and carried from the foundation up to the roof, were buildings within the meaning of the covenant: *Lord Manners v. Johnson*, 1 Ch. D. 673. Temporary structures intended to be used for storing workmen's tools and for the purpose of a brick kiln, were held not to be buildings within the meaning of bye-laws of a local board: *Fielding v. The Rhyl Improvement Commissioners*, 3 C. P. D. 272. The word building is not restricted to erections above the surface of a street. Thus, arches over which a roadway was made, and which were used as store-houses, were held to be buildings within section 7 of the Gasworks Clauses Act, 1847: *Thompson v. The Sunderland Gas Company*, 25 W. R. 809; 2 Ex. D. 429.

Where a bedroom had been erected in place of a conservatory, the external wall of the house having been raised for the purpose, and the trustees, upon a summons for making an addition to an existing building without complying with certain bye-laws, held that there was no addition to an existing building on the ground that the bedroom occupied no more space than the conservatory did, the court sent back the case to the trustees, holding that this fact was not *per se* conclusive: *Meadows v. Taylor*, L. J. N. C. [1890] 56. Three caravans, a shooting gallery, and a steam roundabout, were held not to be "structures or erections of a movable or temporary character" within the meaning of 45 Vict. c. 14, s. 13: *Hall v. Smallpiecee*, L. J. N. C. [1890] 56; 54 J. P. 276.

The appellant, manager of an advertising company, erected boarded walls or hoardings raised to a height of from 13 to 19 feet round three sides of a piece of land. These hoardings were stayed, fastened, and tied together, and strengthened on the inner side. The space within the hoardings was used by the appellant for preparing wood for hoard-

ings which he placed elsewhere. It was held that the structure was not SECT. 141. a new building : *Slaughter v. Sunderland (Corporation of)*, 60 L. J. ^{— Note.} M. C. 91.

The expression "bakehouse" means any place in which are baked bread, biscuits, or confectionery, from the baking or selling of which a profit is derived :

The expression "vessel" includes a boat and every description of vessel used in navigation :

The expression "hospital" means any premises or vessels for the reception of the sick, whether permanently or temporarily applied for that purpose, and includes an asylum of the Metropolitan Asylum Managers :

The expression "master" means in the case of a building or part of a building, a person in occupation of or having the charge, management, or control of the building, or part of the building, and in the case of a house, the whole of which is let out in separate tenements, or in the case of a lodging-house, the whole of which is let to lodgers, includes the person receiving the rent payable by the tenants or lodgers, either on his own account or as the agent of another person, and in the case of a vessel means the master or other person in charge thereof :

This definition is the same as that of an occupier in 52 & 53 Vict. c. 72, s. 16. The word "master" has, in most instances, been substituted for "occupier" throughout this Act.

The expression "house refuse" means "ashes, cinders, breeze, rubbish, night-soil, and filth, but does not include trade refuse :

The expression "trade refuse" means the refuse of any trade, manufacture, or business, or of any building materials :

SECT. 141. The expression "street refuse" means dust, dirt, rubbish, mud, road-scrapings, ice, snow, and filth

These definitions are important for the purposes of the construction of sections 29—36 of this Act. The following decisions on the earlier Acts may be noticed :—

House refuse does not extend to dust and ashes, the exclusive produce of manufactoryes : *Lyndon v. Standbridge*, 26 L. J. Ex. 386 ; 2 H & N. 45 ; 29 L. T. (o.s.) 111. And see *Law v. Dodd*, 17 L. J. M. C. 65 ; 1 Ex. 845 ; 10 L. T. (o.s.) 286, 309. Ashes arising from coals burnt in the furnace of a steam engine used for the purpose of sawing and lifting timber and other materials for carrying on the business of a piano manufacturer, were held not to be house refuse in *Gay v. Cadby*, 2 C. P. D. 391 ; 46 L. J. M. C. 260 ; 36 L. T. (N.S.) 410 ; 41 J. P. 503. The local authority under an order of the Local Government Board are bound to remove refuse from a workhouse, even though such workhouse may by a local Act be rated at a less amount than other property in the parish or district : *Guardians of Holborn Union v. The Vestry of St. Leonard's, Shoreditch*, 2 Q. B. D. 145 ; 46 L. J. Q. B. 36 ; 35 L. T. (N.S.) 400 ; 25 W. R. 40 ; 40 J. P. 740.

The local authority are not bound to remove articles improperly placed in a dust-bin, such as "broken glass, shoes, and other things which it might not be convenient otherwise to get rid of." Where such articles were removed and were afterwards abstracted by the servants of a metropolitan vestry, it was held that the contractor for the removal of the house refuse was not entitled to compensation in respect of them : *Collins v. The Vestry of Paddington*, 48 L. J. Q. B. 345 ; 40 L. T. (N.S.) 843 ; 27 W. R. 504 ; 43 J. P. 367.

Clinkers produced in the furnaces of boilers belonging to a hotel, used to generate steam for the purpose of supplying power for the electric lighting and for warming and cooking and other purposes of the hotel, are not refuse of a trade manufacture or business, and, therefore, the scavengers, under 18 & 19 Vict. c. 120, s. 125, corresponding to section 30 of this Act, were held bound to remove them without payment : *St. Martin's (Vestry of) v. Gordon*, L. R. [1891] 1 Q. B. 61 ; 60 L. J. M. C. 37 ; 43 J. P. 373.

The expression "owner" means the person for the time being receiving the rack-rent of the premises in connection with which the word is used, whether on his own account or as agent or trustee for any other

person, or who would so receive the same if such SECT. 141. premises were let at a rack-rent :

This definition is the same as that given by section 4 of the Public Health Act, 1875.

The use of the word *means* here appears to be restrictive, and to imply that what follows is to be the only interpretation of the word *owner*, so that the owner of the fee simple who has let the lands upon a nominal ground rent is not within the definition. See *Evelyn v. Wychord*, *Cook v. Montague*, *Cudwell v. Hanson*, *Poplar Board of Works v. Lowe, infra*.

By section 2 of the Nuisances Removal Act, 1855, the word *owner* included any person receiving the rents of the property in respect of which the word is used, from the occupier of such property, on his own account, or as trustee or agent for any other person. A. was lessee for 21 years, at a rack rent, of a house and shop; he occupied the shop himself, and underlet the upper part of the house to B. as a yearly tenant. The upper part was shut off from the shop, and A. had no access to it. There was a privy in the upper part of the house, which the nuisance authority took proceedings to abate, as a nuisance arising from a defective construction of a struetural convenience, and they proceeded against C., who received the rent from A. as agent for A.'s landlord :—held, that C. was not owner, as he did not receive the rent from B., who was the occupier of the premises on which the nuisance arose, and of which A. was the owner : *Cook v. Montague*, L. R. 7 Q. B. 418; 41 L. J. M. C. 149; 37 J. P. 53. It is to be observed that the words "from the occupier of such property," which occurred in the Nuisances Removal Act, are not in the text. But it is submitted that the omission is not material, and that the person who is the owner within the meaning of the definition must always be determined with reference to the occupier. The point may be of importance where there are intermediate lessors. The opinion here expressed is borne out by a decision upon the identical definition in the Public Health (Ireland) Act, 1878, s. 2. There J. let to B. from year to year at a rack-rent, and B. let to weekly tenants. It was held that B., and not J., was the owner : *Bowen v. James*, 10 L. R. Ir. 25.

By section 250 of the Metropolis Local Management Act, 1885 (18 & 19 Vict. c. 120), "owner" is defined to mean the person for the time being receiving the rack-rent of the lands or premises in connection with which the said word is used, whether on his own account or as agent or trustee for any other person, or who would so receive the same if such lands or premises were let at a rack-rent. The owner of houses abutting on a new street occupied the land under a building

SECT. 141, agreement, by which the owner of the land agreed to demise to the owner of the houses or his nominees the several pieces of land upon which he was to build, as the houses and buildings respectively became erected and covered for 80 years, at the rent of a peppercorn for two years, and of sums increasing every year up to 36*l.* in the sixth and following years. He was to be considered as holding the undemised portion on the terms of the leases. There was a power of re-entry upon non-completion of the building covenants. The houses at the date when the expenses which were the subject of the action were incurred were in every stage of building progress, and some had been demised to other persons at defendant's nomination:—Held, that with the exception of the houses demised to other persons, he was liable as owner of all the premises. Per BLACKBURN, J.: “He was in actual occupation; his peppercorn rent was to be raised to a ground rent. There could not be a reason for saying that the freeholder was receiving the rack-rent. It may be a substantial rent, but not such as to prevent the defendant from being the owner”: *Poplar Board of Works v Lowe*, 29 L. T. (N.S.) 915. In *Lady Holland v. The Vestry of Kensington*, L. R. 2 C. P. 565; 36 L. J. M. C. 105: 31 J. P. 758, A., being owner in fee of certain land, entered into a building agreement with B., whereby B. agreed to build certain houses on part of the land, and lay out the remainder as a garden for the exclusive use of the tenants of the houses, and A. agreed to grant to B. a lease of each house as it was built, and to grant him a lease of the garden with the last house; and it was expressly agreed that B. should have no interest in any house or land until a lease of it was granted. B. built some of the houses, but not all, and laid out the garden, and A. subsequently sold the reversion of the houses which were built to C. The parish in which the land was situated having paved a road running past the garden, claimed repayment of the expenses from A. It was held that A. was the owner, and therefore liable. Per WILLES, J.: “If the houses had been all built, and B. had obtained a lease of the garden, he would have been trustee for the inhabitants of the houses under the section. But at present A. is the legal owner, subject only to certain easements possessed by the inhabitants of the houses that have been built, and to the consideration that if and when certain acts are done she will be bound to grant the legal estate to B. It may be that she only holds as trustee for the inhabitants of the houses, but it is not only the beneficial owner, but the owner who holds as trustee for others, that is liable to make payments under the Acts.”

The Metropolitan Building Act, 1855 (18 & 19 Vict. c. 122), s. 3,

provides that the word *owner* shall apply to every person in possession SECT. 141. or receipt either of the whole or of any part of the rents or profits of any land or tenement, or in the occupation of such land or tenement, other than as a tenant from year to year or for any less term, or as a tenant at will. It was held that an owner of land in fee simple, who lets it on a building lease at a peppercorn rent, is not liable as owner, such a rent not being within the meaning of the section: *Evelyn v. Wychord*, E. B. & E. 126; 27 L. J. M. C. 211; 22 J. P. 658. In *Cowen v. Phillips*, 33 Beav. 18, it was held that a tenant in possession, having an equitable interest only under an agreement for a lease for a term of three years, is in equity an owner under this section. In *Hunt v. Harris*, 34 L. J. C. P. 249, the lessee of a house for a long term of years, who had under-let it in different portions to different tenants, and who was in receipt of the rents from such under-lettings, was held to be the owner of the party-wall of such house within the meaning of the above section, notwithstanding that the under-lettings created a greater interest in the under-tenants than that of a yearly tenancy. In *Mourilyan v. Labalmondiere*, 1 E. & E. 533; L. J. M. C. 95; 25 J. P. 340, the appellants were seised in fee of a building used as a chapel, which they had let on lease for 21 years. It was held that they were not, but that the lessee was the owner within the meaning of the section. In *Caudwell v. Hanson*, L. R. 7 Q. B. 55; 41 L. J. M. C. 8; 36 J. P. 470, the appellant, who was seised in fee of certain building land, entered into an agreement with L. to grant building leases of 99 years of certain plots of the land, so soon as L. should have erected houses thereon, at a peppercorn, until June 24th, 1870, and afterwards at 28*l.* a year. L. built houses which were roofed in about September, 1870, and it was held that he was the owner, and that it was immaterial whether his title was legal or equitable only. And see to the same effect *St. Helen's Corporation v. Riley*, 47 J. P. 471. In *Reg. v. Lee*, 4 Q. B. D. 75; 48 L. J. M. C. 22; 43 J. P. 302, it was held that the incumbent of a district church in the metropolis, although the freehold of the church was vested in him, was not the owner within the above section, as he neither received the rents and profits of the church nor was in occupation of it. But in *Folkestone (Corporation of) v. Woodward*, L. R. 15 Eq. 159; 42 L. J. Ch. 782; 27 L. T. (N.S.) 574; 21 W. R. 97, where it was held that a church was a house within the meaning of a bye-law prescribing a building line, it was held that a perpetual curate, in whom the freehold was vested, was the owner. As to the case where land is devised for a long term on trust to pay debts, &c., see *Mansell v. Norton*, 22 Ch. D. 769.

Note.

SECT. 141. The trustee of a national school is an owner: *Bowditch v. The Wakefield Local Board*, L. R. 6 Q. B. 567; 40 L. J. M. C. 214; 36 J. P. 197. The Ecclesiastical Commissioners, in whom a church not built by them was vested, were held not to be the owners within 25 & 26 Vict. c. 102: *Angell v. Vestry of Paddington*, *ante*, p. 237. And see *Plumstead Board of Works v. The Ecclesiastical Commissioners*, L. R. [1891] 2 Q. B. 361. But the trustees of a dissenting chapel, registered as a place of religious worship, were held liable as the owners of a house in *Caiger v. St. Mary, Islington (Vestry of)*, 50 L. J. M. C. 59; 44 L. T. (N.S.) 605; 29 W. R. 538; 45 J. P. 570. And a leasehold chapel vested in trustees on trust, to permit it to be used as a place of religious worship by a congregation of Wesleyans, was held to be a house within the meaning of the same Act, on the ground that by the consent of the landlord, the trustees, and the *cestuis que trustent*, the trust might at any moment be put an end to; it was also held that the trustees were owners of the chapel: *Wright v. Ingle*, 16 Q. B. D. 379; 55 L. J. M. C. 17; 34 W. R. 221. The trustees of a Baptist Chapel, who were bare trustees, having no beneficial interest in the chapel, were held to be owners so as to be liable to pay paving expenses under section 150 of the Public Health Act, 1875: *Hornsey Local Board v. Brewis*, W. N. [1890] 189; 54 J. P. 724; 7 T. L. R. 27. The owner of private roads adjoining land belonging to him was held to be an owner within the meaning of the same Act: *Pound and Lord Northbrook v. The Plumstead Board of Works*, L. R. 7 Q. B. 183; 41 L. J. M. C. 51; 36 J. P. 468. But a land society who had set out and dedicated certain roads to the public, and sold off the building plots fronting them, were held by the Exchequer Chamber not to be owners of land within the Act, a previous decision of the Court of Queen's Bench being reversed: *Plumstead Board of Works v. British Land Company*, L. R. 10 Q. B. 203; 44 L. J. Q. B. 38; 39 J. P. 376. In that case Lord COLERIDGE, C.J., distinguished *Lord Northbrook v. The Plumstead Board of Works*, *supra*, on the ground that Lord Northbrook had here "for his own purposes determinately reserved his property in the private roads to himself. He might at any time have put an end to the dedication of them to his own tenants, which was all he had ever done. There was no dedication of it to the public, and there was nothing done past recall." The same learned judge, referring to *Angell v. The Vestry of Paddington*, *supra*, indicates an opinion that when expenses are sought to be recovered under such Acts as the Public Health Acts from persons as owners of land, it is not enough that they should be owners of land or houses

“for real property purposes,” but they must be “the owners of land SECT 141 which could be let at a rack-rent within the meaning of the statute.” This decision was followed by POLLOCK, B., in *Hampstead Vestry v. Cotton*, 16 Q. B. D. 457.

Note.

In *The Great Eastern Railway Company v. Hackney District Board of Works*, *ante*, p. 236, the company were sought to be charged as owners of land abutting on a new street. The street was carried over the railway cutting by a bridge, the parapets of which consisted of two walls resting upon arches, which had their foundations outside the lines of the roadway in the company’s land. The walls were not used otherwise than as fences for the bridge. It was held that the company were not liable as owners. “The bridge is, by the statute, dedicated to public use, and its fence walls are provided for public protection; and if the ownership and control of the walls is in the company, it is so for public purposes, and subject to the obligation of perpetual maintenance, unless and until some other good and sufficient fence shall be provided by the company in their stead for the public protection. The company could not let the walls at a rack-rent; and if they might use them for any purpose, it must be a use subordinate to the public purposes to which the bridge, as a structure, is in its whole devoted.” This case was distinguished in *Williams v. Wandsworth District Board of Works*, 13 Q. B. D. 211; 53 L. J. M. C. 187; 32 W. R. 908; 48 J. P. 439. There the appellant was held to be chargeable as owner of a strip of land, 4 inches wide and 265 feet in length, upon which he had erected a boundary fence along the whole extent of the strip, under a covenant to erect and for ever after maintain a fence thereon made with his vendor, who was the owner of the land adjoining the strip.

Upon a similar definition in a local Act, it was held that an agent employed to collect the rents of property charged with an apportionment of paving expenses was an owner, and liable as such to be called upon to pay, whether he had money of his principal in hand or not, at any time while the sum assessed upon the premises remained unpaid: *St. Helen’s (Mayor, &c., of) v. Kirkham*, 16 Q. B. D. 403; 34 W. R. 440; 50 J. P. 647. In *Cook v. Montague, infra*, BLACKBURN, J., said: “The object of the legislature seems to have been this, that as the occupier was often poor, and the real owner might be difficult to discover, it was well to get at the collector of rents, who could always be found out; and hence the person who receives the rack-rent from the occupier is deemed the owner.” A receiver appointed by the court is not an owner within this definition: *Bacup (Corporation of) v. Smith*, 44 Ch. D. 395.

SECT. 141. The expression "rack-rent" means rent which is not less than two-thirds of the full annual value of the premises out of which the rent arises; and the full annual value shall be taken to be the annual rent which a tenant might reasonably be expected, taking one year with another, to pay for the premises, if the tenant undertook to pay all usual tenant's rates and taxes, and tithe commutation rentcharge (if any), and if the landlord undertook to bear the cost of the repairs, and insurance, and the other expenses (if any) necessary to maintain the premises in a state to command such rent:

This definition is identical with that contained in section 4 of the Public Health Act, 1875. The definition of "full annual value" is the same as that of "rateable value" in the Acts relating to poor rate. See 32 & 33 Vict. c. 67, s. 4.

The expression "slaughterer of cattle or horses" means a person whose business it is to kill any description of cattle, or horses, asses, or mules, for the purpose of the flesh being used as butcher's meat; and the expression "slaughter-house" means any building or place used for the purpose of such business:

The expression "knacker" means a person whose business it is to kill any horse, ass, mule, or cattle which is not killed for the purpose of the flesh being used as butcher's meat; and the expression "knacker's yard" means any building or place used for the purpose of such business:

The expression "cattle" includes sheep, goats, and swine:

See as to these definitions, sections 19, 20, *ante*, p. 38. See the cases cited in the notes to these sections.

By a clause in a local improvement Act, it was enacted that "no person shall slaughter any cattle or dress any carcase for sale as human food, or food of man, in any place within the limits other than a

slaughter-house." It was held that to slaughter cattle on the private **SECT. 141.** premises of an inhabitant of the town, unless *for sale* as human food, was no offence within the clause : *Elias v. Nightingale*, 27 L. J. M. C. 151 ; 8 E. & B. 698. *Note.*

The expression "source of water supply" means any stream, reservoir, aqueduct, pond, well, tank, cistern, pump, fountain, or other work or means for the supply of water, whether actually used or capable of being used for the supply of water or not :

This expression is used in section 52, *ante*, p. 104.

The expression "sanitary convenience" includes urinals, water-closets, earth-closets, privies, and any similar conveniences :

This definition is taken from 53 & 54 Vict. c. 59, s. 11, sub-section (3).

The expression "day" means the period between six o'clock in the morning and the succeeding nine o'clock in the evening :

This definition contains a more extended meaning of the daytime than has hitherto been given in the Public Health Acts. See, for example, section 102 of the Public Health Act, 1875.

The expression "ashpit" means any ashpit, dust-bin, ashtub, or other receptacle for the deposit of ashes or refuse matter :

The expression "cistern" includes a water-butt :

The expression "dairy" includes any farm, farmhouse, cowshed, milk-store, milk-shop, or other place from which milk is supplied, or in which milk is kept for purposes of sale :

The expression "dairyman" includes any cowkeeper, purveyor of milk, or occupier of a dairy.

SECT. 142.

Repeal.

Repeal.
Repeal of
enact-
ments in
schedule.

142.—(1) The Acts specified in the Fourth Schedule to this Act are hereby repealed to the extent specified in the third column of that schedule, and shall be so repealed as from the date in that schedule mentioned, and where no date is mentioned as from the commencement of this Act;

(2) Provided that—

(a.) Where any enactment in the said schedule extends beyond London, such enactment shall not unless otherwise expressed be deemed to be hereby repealed, so far as it applies beyond London:

(b.) All securities given under, and all orders, bye-laws, rules, regulations, and notices duly made or issued under or having effect in pursuance of any Act hereby repealed shall be of the same validity and effect as if they had been given, made, or issued under this Act, and any penalties recoverable under any such order, bye-law, rule, regulation, or notice may be recovered as if they were imposed by bye-laws under this Act.

(3) Where the county council or a sanitary authority are required by this Act to make bye-laws for any purpose for which there are no bye-laws of the council or authority in force at the commencement of this Act, the first bye-laws made by the county council or sanitary authority for that purpose under this Act shall be submitted to the Local Government Board for sanction not later than six months after the commencement of this Act.

It will, therefore, be the duty of these bodies to submit bye-laws for approval not later than the 1st July, 1892. See the next section.

(4) Any enactment expressed in the Fourth Schedule SECT. 112. to this Act to be repealed as from the coming into operation of any bye-law made for the like object shall, although no such bye-law is made, be repealed on the expiration of twelve months next after the commencement of this Act, or such later day, not exceeding eighteen months from such commencement, as may be fixed by Order in Council.

(5) For the removal of doubts it is hereby declared that so much of the Public Health Act, 1875, as re-enacts 38 & 39 sections fifty-one and fifty-two of the Sanitary Act, 1866, Viet. c. 55. 29 & 30 and sections thirty-four to thirty-six of the Public Health Viet. e. 90. Act, 1872, extends to London. 35 & 36 Viet. e. 79.

The 29 & 30 Viet. c. 90, and the 35 & 36 Viet. e. 79, were repealed by the Public Health Act, 1875, except in so far as they related to the metropolis, but the sections above-mentioned were re-enacted by Schedule 5. These Acts are now almost wholly repealed as regards the metropolis, and the provision in the text is in effect to re-enact certain sections of them, which are as follows:—

All penalties imposed by the Act of the sixth year of King George the Fourth, chapter seventy-eight, intituled "An Act to repeal the several laws relating to quarantine and to make other provisions in lieu thereof," may be reduced by the justices or court having jurisdiction in respect of such penalties to such sum as the justices or court think just. 4, e. 78.

Every vessel having on board any person affected with a dangerous or infectious disorder shall be deemed to be within the provisions of the Act of the sixth year of King George the Fourth, chapter seventy-eight, although such vessel has not commenced her voyage, or has come from or is bound for some place in the United Kingdom. 29 & 30 Viet. e. 90, s. 52.

Where in any local Acts the consent, sanction, or confirmation of one of Her Majesty's Principal Secretaries of State is required with respect to the borrowing of any money, to the giving effect to any bye-laws, or to the appointment of any officer for sanitary purposes, the consent, 35 & 36 sanction, or confirmation of the Local Government Board shall be Viet. e. 76, required instead of that of the Secretary of State. s. 34.

As to
consent of Local

SECT. 142. The consent of the Local Government Board, and not that of the Treasury, shall be required to the borrowing of money for the purposes of the Baths and Wash-houses Acts.

Note.
Govern-
ment
Board
required
in certain
cases.

35 & 36 Vict.
c. 79, s. 35.
Transfer of
powers and
duties of
Board of
Trade under

Alkali Act,
1863, and
Metropolis
Water Acts,
1852 and
1871, to
Local
Government
Board.

35 & 36 Vict.
c. 79, s. 36.
Transfer of
powers and
duties of
Secretary of
State under
Highway
and Turn-
pike Acts to
Local
Govern-
ment Board.

If any question arises as to what are sanitary purposes within the meaning of this section, the determination of the Local Government Board on such question shall be conclusive.

The powers and duties of the Board of Trade under the Alkali Act, 1863, and any Act amending the same, and under the Metropolis Water Acts, 1852 and 1871, shall be exercisable and performed by the Local Government Board, and "the Local Government Board" shall be deemed to be substituted for "the Board of Trade" wherever the latter expression occurs in the said Acts.

All powers, duties, and acts vested in, imposed on, or required to be done by or to one of Her Majesty's Principal Secretaries of State by the several Acts of Parliament relating to highways in England and Wales, and to turnpike roads and trusts and bridges in England and Wales, shall be imposed on and be done by or to the Local Government Board, subject to the conditions, liabilities, and incidents to which such powers, duties, and acts were respectively subject immediately before the passing of the Public Health Act, 1872, or as near thereto as circumstances admit.

(6) Officers appointed under any enactment hereby repealed shall continue in office in like manner as if they were appointed in pursuance of this Act, subject nevertheless to the provisions of this Act respecting existing officers.

The provisions of this Act as to existing officers are contained in section 139, *ante*, p. 228.

(7) Where in any enactment or in any order made by a Secretary of State or by the Local Government Board, and in force at the time of the passing of this Act, or in any document, any Act or any provisions of an Act are mentioned or referred to which relate to London and are repealed by this Act, such enactment, order, or document shall be read as if this Act or the corresponding provisions of this Act were therein mentioned or referred to instead

of such repealed provisions, and as if a sanitary authority Sect. 142.— under this Act were substituted for any nuisance authority mentioned in such repealed provisions.

A table will be found in this volume shewing the sections of this Act which correspond to the repealed statutes.

143. This Act shall come into operation on the first Commence-
day of January next after the passing thereof. ment of
Act.

144. This Act may be cited as the Public Health Short
(London) Act, 1891. title.

S C H E D U L E S .

F I R S T S C H E D U L E .

E N A C T M E N T S A P P L I E D .

SCHED. 1.

34 & 35

Vict.

c. 113.

Absence of
proper
water
fittings in
premises
to be a
nuisance.*Section 33 of the Metropolis Water Act, 1871.*

33. The absence in respect of any premises of the prescribed fittings after the prescribed time shall be a nuisance, within section 11 and sections 12—19 (inclusive) of the Nuisances Removal Act for England, 1855, and within all provisions of the same or any other Act applying, amending, or otherwise relating to those sections; and that nuisance, if in any case proved to exist, shall be presumed to be such as to render the premises unfit for human habitation within section 13 of the Nuisances Removal Act for England, 1855, unless and until the contrary is shown to the satisfaction of the justices acting under that section.

The absence of water fittings as in the above section mentioned is a nuisance liable to be dealt with summarily. Section 3, *ante*, p. 10. And such absence of water fittings is to be deemed to render the premises unfit for human habitation, unless and until the contrary is shown to the satisfaction of the court, section 4, sub-section (3), *ante*, p. 17. See also as to houses without a proper water supply, sections 48, 49, *ante*, p. 98.

38 & 39
Vict. c. 55.*Sections 108 and 115 of the Public Health Act, 1875,
relating to Nuisances out of the District.*Power to
proceed
where
cause of

108. Where a nuisance under this Act within the district of a local authority appears to be wholly or partially caused by some act or default committed or

taking place without their district, the local authority SCHED. 1. may take or cause to be taken against any person in respect of such act or default any proceedings in relation to nuisances by this Act authorised, with the same incidents and consequences, as if such act or default were committed or took place wholly within their district; so, however, that summary proceedings shall in no case be taken otherwise than before a court having jurisdiction in the district where the act or default is alleged to be committed or take place.

This section shall extend to the metropolis so far as to authorise proceedings to be taken under it by any nuisance authority in the metropolis in respect of any nuisance within the area of their jurisdiction caused by an act or default committed or taking place within the district of a local authority under this Act: or by any such local authority in respect of any nuisance within their district caused by an act or default committed or taking place within the jurisdiction of any such nuisance authority.

It is provided by section 14, sub-section (2), *ante*, p. 32, that the above section shall continue to apply to London with the substitution of a sanitary authority (as defined by section 99, *ante*, p. 166) for any nuisance authority mentioned in the section, and any reference in the section to a nuisance in the metropolis is to include a nuisance under this Act.

115. Where any house, building, manufactory, or place which is certified in pursuance of the last preceding section to be a nuisance or injurious to the health of any of the inhabitants of the district of an urban authority is situated without such district, such urban authority may take or cause to be taken any proceedings by that section authorised in respect of the matters alleged in the certificate, with the same incidents and consequences, as if the house, building, manufactory, or place were

Power to proceed where nuisance arises from offensive trade carried on without district.

SCHED. 1. situated within such district; so, however, that summary proceedings shall not in any case be had otherwise than before a court having jurisdiction in the district where the house, building, manufactory, or place is situated.

This section shall extend to the metropolis so far as to authorise proceedings to be taken under it by any nuisance authority in the metropolis in respect of any house, building, manufactory, or place which is certified as aforesaid to be a nuisance or injurious to the health of any of the inhabitants within the area of their jurisdiction, and is situated within the district of a local authority under this Act; or by any urban authority in respect of any house, building, manufactory, or place which is certified as aforesaid to be a nuisance or injurious to the health of any of the inhabitants of their district, and is situated within the jurisdiction of any such nuisance authority.

It is provided by section 21, sub-section (5), *ante*, p. 48, that the above section shall continue to extend to London, with the substitution of a sanitary authority (as defined by section 99, *ante*, p. 166,) for a nuisance authority, and any reference in the above section to a nuisance in the metropolis, or to any building manufactory, or place in the metropolis which is injurious to health, shall include any nuisance within the meaning of this Act, and any manufactory, building, or place which is dangerous to health.

38 & 39 Sections 130, 134, 135, and 140 of the Public Health Act,
Vict. c. 55. 1875, and section 2 of the Public Health Act, 1889,
52 & 53 relating to Regulations and Orders of the Local
Vict. c. 64. Government Board with respect to Cholera, or other
Epidemic, Endemic, or Infectious Diseases.

Power of
Local
Govern-
ment

130. The Local Government Board may from time to time make, alter, and revoke such regulations as to the said Board may seem fit, with a view to the treatment

of persons affected with cholera, or any other epidemic, endemic, or infectious disease, and preventing the spread of cholera and such other diseases as well on the seas, rivers, and waters of the United Kingdom, and on the high seas within three miles of the coasts thereof, as on land; and may declare by what authority or authorities such regulations shall be enforced and executed. Regulations so made shall be published in the *London Gazette*, and such publication shall be for all purposes conclusive evidence of such regulations.

Any person wilfully neglecting or refusing to obey or carry out or obstructing the execution of any regulation made under this section shall be liable to a penalty not exceeding fifty pounds.

It is provided by section 82, *ante*, p. 143, that the sanitary authority of any district within which or part of which regulations issued by the Local Government Board in pursuance of the above section are in force, shall superintend and see to the execution thereof, and shall appoint and pay such medical or other officers or persons, and do and provide all such acts, matters and things as may be necessary for mitigating any disease to which the regulations relate, or for superintending, or aiding in the execution of such regulations, or for executing the same, as the case may require.

It is further provided by section 113, *ante*, p. 185, that the above section and sections 134, 135, and 140, of the Public Health Act, 1875, and section 2 of the Public Health Act, 1889 (set out below), shall extend to London, and shall apply in like manner as if a sanitary authority under this Act were a local authority within the meaning of those sections.

The existing regulations are set out at the end of this Work.

2.—(1) Regulations of the Local Government Board made in relation to cholera and choleraic diarrhoea in pursuance of section one hundred and thirty of the Public Health Act, 1875, may provide for such regulations being enforced and executed by the officers of customs as well as by other authorities and officers, and

Explan-
ation of
powers of
Local
Govern-
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Board to
make
regula-
tions.

SCHED. 1. without prejudice to the generality of the powers conferred by the said section may provide for the detention of vessels and of persons on board vessels, and for the duties to be performed by pilots, masters of vessels, and other persons on board vessels;

See the note to section 130 of the Public Health Act, 1875, *supra*.

The existing regulations which are set out, *post*, provide for their being enforced and executed by officers of customs.

(2) Provided that the regulations, so far as they apply to the officers of customs, shall be subject to the consent of the Commissioners of Her Majesty's Customs;

(3) The officers of customs, for the purpose of the execution of any powers and duties under the said regulations, may exercise any powers conferred on such officers by any other Act.

Power of
Local
Govern-
ment
Board to
make
regula-
tions for
preven-
tion of
diseases.

134. Whenever any part of England appears to be threatened with or is affected by any formidable epidemic, endemic, or infectious disease, the Local Government Board may make and from time to time alter and revoke regulations for all or any of the following purposes; (namely),

- (1) For the speedy interment of the dead; and
- (2) For house to house visitation; and
- (3) For the provision of medical aid and accommodation, for the promotion of cleansing, ventilation, and disinfection, and for guarding against the spread of disease;

and may by order declare all or any of the regulations so made to be in force within the whole or any part or parts of the district of any local authority, and to apply to any vessels, whether on inland waters or on arms or parts of the sea within the jurisdiction of the Lord High

Admiral of the United Kingdom or the commissioners ^{SCHED. 1.} for executing the office of the Lord High Admiral for the time being, for the period in such order mentioned; and may by any subsequent order abridge or extend such period.

See the note to section 130, *supra*.

Epidemic diseases are "those which prevail among a large portion of the people of a country, rage for a certain time, and then gradually diminish and disappear, to return again at periods more or less remote. Thus cholera and influenza lately appeared as epidemic diseases in this country, and the continued fevers called synochus and typhus, and what are termed the eruptive fevers, as scarlet fever, the small-pox, the measles, frequently prevail as epidemics in different parts of the country. It is essential to the medical notion of an epidemic disease, that it should be dependent on some common and widely extended cause, of a temporary in contra-distinction to a persistent nature."

Epidemic diseases are "those peculiar forms of disease which arise spontaneously, as it is termed, in a country, or in particular localities, and which are ordinarily produced by the peculiar climate, soil, air, water, &c. Thus ague is the endemic disease of marshy countries or localities, the swelled throat or bronchocelle is endemic in the Alps, and the plica in Poland. The word bears pretty much the same signification in relation to the diseases of a country that the term *indigenous* does to its plants." ("Penny Cyclopaedia.")

These diseases, however, must be *formidable*, which imply so extensive an existence as to create a very general alarm.

It rests now with the Local Government Board to determine how far the nature of the disease and the extent of its prevalence is such as to require these extraordinary measures to be taken. They have absolute control over the regulations to be prescribed.

135. All regulations and orders so made by the Local Government Board shall be published in the *London Gazette*, and such publication shall be conclusive evidence thereof for all purposes.

That is to say, the production of the *Gazette* shall be evidence of the making and issuing of the orders. But the copy produced must contain the imprint of the Queen's printer, and purport to be published by authority. A conviction was quashed where a court of quarter

SCHED. 1. sessions had received in evidence an entire page of the *Gazette* not containing these requisites: *Reg. v. Lowe*, 48 L. T. (N.S.) 768; 47 J. P. 535; 52 L. J. M. C. 122.

* * * * *

Penalty
for vio-
lating or
obstruct-
ing the
execution
of regula-
tions.

140. Any person who—

- (1) Wilfully violates any regulation so issued by the Local Government Board as aforesaid; or,
- (2) Wilfully obstructs any person acting under the authority or in the execution of any such regulation,

shall be liable to a penalty not exceeding five pounds.

As to the recovery of the penalty, see section 117, *ante*, p. 190.

* * * * *

*Sections 182—186 of the Public Health Act, 1875,
relating to Bye-Laws.*

38 & 39
Vict. c. 55.
Authen-
tication
and altera-
tion of
bye-laws.

182. All bye-laws made by a local authority under and for the purposes of this Act shall be under their common seal; and any such bye-law may be altered or repealed by a subsequent bye-law made pursuant to the provisions of this Act: Provided that no bye-law made under this Act by a local authority shall be of any effect if repugnant to the laws of England or to the provisions of this Act.

This section and the four following are incorporated by section 114, *ante*, p. 185, and apply to bye-laws made under this Act by the sanitary authority or the county council.

Bye-laws are made by the sanitary authority under sections 16 (1), 39 (2), 50, 66 (3), 88, 94, 95 (2); and by the county council under sections 16 (2), 19 (4), 28 (2), 39 (1).

The sanitary authority or county council have no power to make bye-laws for purposes of this Act except to the extent that the Act expressly empowers them to do so: *Reg. v. Wood*, 5 E. & B. 49; 3 C. L. R. 1134; S. C. sub. nom.; *Reg. v. Rose*, 1 Jur. (N.S.) 802; 24 L. J. M. C. 130; 19 J. P. 676.

183. Any local authority may, by any bye-laws made SCHED. 1. by them under this Act, impose on offenders against the same such reasonable penalties as they think fit, not exceeding the sum of five pounds for each offence, and in the case of a continuing offence a further penalty not exceeding forty shillings for each day after written notice of the offence from the local authority; but all such bye-laws imposing any penalty shall be so framed as to allow of the recovery of any sum less than the full amount of the penalty.

Penalties for breaches of bye-laws made under this Act will be recoverable under section 117, *ante*, p. 190.

184. Bye-laws made by a local authority under this Act shall not take effect unless and until they have been submitted to, and confirmed by, the Local Government Board, which Board is hereby empowered to allow or disallow the same as it may think proper; nor shall any such bye-laws be confirmed—

Unless notice of intention to apply for confirmation of the same has been given in one or more of the local newspapers circulated within the district to which such bye-laws relate, one month at least before the making of such application; and

Unless for one month at least before any such application a copy of the proposed bye-laws has been kept at the office of the local authority, and has been open during office hours thereat to the inspection of the ratepayers of the district to which such bye-laws relate, without fee or reward.

The clerk of the local authority shall, on the application of any such ratepayer, furnish him with a copy of such proposed bye-laws or any part thereof, on payment of sixpence for every hundred words contained in such copy.

SCHED. I. A bye-law required to be confirmed by the Local Government Board shall not require confirmation, allowance, or approval by any other authority.

The object of publishing notice of the intention to make bye-laws is to enable persons interested to object before confirmation. In the case of bye-laws under section 19, sub-section (6), the Local Government Board are required to consider the objections made by any sanitary authority or person aggrieved, but it may be doubted whether the express provision was necessary.

Reference may be made to a Circular of the Local Government Board, dated 25th July, 1877, relating to the framing of bye-laws by urban sanitary authorities. The text of the Circular will be found in Glen's "Local Government Orders," p. 573.

Bye-laws
to be
printed,
&c.

185. All bye-laws made by a local authority under this Act, or for purposes the same as, or similar to, those of this Act under any local Act, shall be printed and hung up in the office of such authority; and a copy thereof shall be delivered to any ratepayer of the district to which such bye-laws relate, on his application for the same.

No charge can be made for a copy of the bye-laws.

Evidence
of bye-
laws.

186. A copy of any bye-laws made under this Act by a local authority, signed and certified by the clerk of such authority to be a true copy and to have been duly confirmed, shall be evidence, until the contrary is proved, in all legal proceedings of the due making, confirmation, and existence of such bye-laws without further or other proof.

It may be necessary to prove the signature of the clerk if he is not present to produce the certified copy.

SCHED. 1.

Sections 293—296 of the Public Health Act, 1875, relating to Inquiries of the Local Government Board. 38 & 39 Vict. c. 55.

293. The Local Government Board may from time to time cause to be made such inquiries as are directed by this Act, and such inquiries as they see fit in relation to any matters concerning the public health in any place, or any matters with respect to which their sanction, approval, or consent is required by this Act.

This section and the three following are applied by section 129, *ante*, p. 220, to all inquiries which the Local Government Board may make in pursuance of or for the purposes of this Act.

294. The Local Government Board may make orders as to the costs of inquiries or proceedings instituted by, or of appeals to, the said Board under this Act, and as to the parties by whom or the rates out of which such costs shall be borne; and every such order may be made a rule of one of the superior courts of law on the application of any person named therein.

The orders of the Board are conclusive. See the next section.

A rule is enforced as a judgment. Rules of the Supreme Court, Order 42, r. 24; Order 71, r. 1.

295. All orders made by the Local Government Board in pursuance of this Act shall be binding and conclusive in respect of the matters to which they refer, and shall be published in such manner as that Board may direct.

296. Inspectors of the Local Government Board, shall, for the purposes of any inquiry directed by the Board, have in relation to witnesses and their examination, the production of papers and accounts, and the inspection of places and matters required to be inspected, similar powers to those which poor law inspectors have under

SCHED. 1. the Acts relating to the relief of the poor for the purposes of those Acts.

The statutes 4 & 5 Will. 4, c. 76, s. 12, and 10 & 11 Vict. c. 109, ss. 20, 21, contain the provisions above referred to with regard to the powers of poor law inspectors.

18 & 19
Vict.
c. 120.

Power to appeal against orders and acts of vestries and district boards in relation to construction of works.

Sections 211 and 212 of the Metropolis Management Act, 1855, relating to Appeals to London County Council.

211. Any person who deems himself aggrieved by any order of any vestry or district board in relation to the level of any building, or any order or act of any vestry or district board in relation to the construction, repair, alteration, stopping or filling up, or demolition of any building, sewer, drain, may, within seven days after notice of any such order to the occupier of the premises affected thereby, or after such act, appeal to the county council against the same; and all such appeals shall stand referred to the committee appointed by such council for hearing appeals as herein provided; and such committee shall hear and determine all such appeals, and may order any costs of such appeals to be paid to or by the vestry or district board by or to the party appealing, and may, where they see fit, award any compensation in respect of any act done by any such vestry or district board in relation to the matters aforesaid: Provided that no such compensation shall be awarded in respect of any such act which may have been done under any of the provisions of this Act on any default to comply with any such order as aforesaid, unless the appeal be lodged within seven days after notice of such order has been given to the occupier of the premises to which the same relates.

This section and the next are incorporated by section 126, *ante*.

Appeal lies to the county council from a sanitary authority (other than the Commissioners of Sewers, section 133, *ante*, p. 222), under sections 37 (5), 41 (3), 43 (3).

212. The county council shall appoint a committee for SCHED. 1. the purpose of hearing all such appeals as may be made to the said council as aforesaid, which committee shall have power to hear and decide all such appeals, and the county council shall from time to time fill up any vacancy in such committee, and the chairman of the said council shall, by virtue of his office of chairman, be a member of the said committee in addition to the members appointed by the said council, and shall preside at all meetings of such committee at which he is present; and in case of a vacancy in the office of such chairman, or in his absence, some other member of the committee shall be chosen to preside; and all the powers of such committee may be exercised by any three of them; and any member of such committee may at any time resign his office.

SECOND SCHEDULE.

PROVISIONS OF PUBLIC HEALTH ACTS EXTENDED TO WOOLWICH. (a)

Enactments.	Subject Matter.
38 & 39 Vict. c. 55 : Section four - - - - -	Definitions.
Sections five to eight, ten, and twelve - - -	Authorities for execution of Act.
Sections thirteen to thirty-four - - -	Sewerage and drainage.
Section forty-one, so far as it relates to a drain.	Examination, and enforce- ment of law, as to drain.

(a) These provisions of the Public Health Acts are extended to Woolwich by section 102, *ante*, p. 172. The reader is referred to "Lumley's Public Health," and a work on the "Public Health Acts, 1887—1890," by the Editor of this volume for the text and annotations of the sections referred to in the schedule.

SCHED. 2.

THE SECOND SCHEDULE—*continued.*

Enactments.	Subject Matter.
Sections fifty-one to sixty-one, sixty-three, and sixty-five.	Water supply.
Sections one hundred and forty-four to one hundred and forty-eight.	Highways.
Sections one hundred and forty-nine to one hundred and fifty-five, and one hundred and fifty-seven to one hundred and sixty.	Streets and buildings.
Sections one hundred and sixty-one to one hundred and sixty-three.	Lighting streets.
Sections one hundred and sixty-four and one hundred and sixty-five.	Public pleasure grounds and cloaks.
Sections one hundred and sixty-six to one hundred and sixty-eight.	Markets.
Section one hundred and seventy-two -	Licensing of, and bye-laws for, horses, boats, &c., let for hire.
Sections one hundred and seventy-three and one hundred and seventy-four.	Contracts.
Sections one hundred and seventy-five to one hundred and seventy-eight.	Purchase of land.
Sections one hundred and seventy-nine to one hundred and eighty-one.	Arbitration.
Sections one hundred and eighty-two to one hundred and eighty-six, and one hundred and eighty-eight.	Bye-laws.
Sections one hundred and eighty-nine, and one hundred and ninety-two to one hundred and ninety-six.	Officers.
Sections one hundred and ninety-seven, one hundred and ninety-nine, two hundred, and two hundred and three to two hundred and six.	Mode of conducting business.

THE SECOND SCHEDULE—*continued.*

SCHED. 2.

Enactments.	Subject Matter.	
Sections two hundred and seven, and two hundred and nine to two hundred and twenty-seven.	Expenses and rates.	
Sections two hundred and thirty-three to two hundred and forty-three.	Borrowing.	
Sections two hundred and forty-five, two hundred and forty-seven, two hundred and forty-nine, and two hundred and fifty.	Audit.	
Sections two hundred and fifty-one, two hundred and fifty-three, two hundred and fifty-four, and two hundred and fifty-six to two hundred and sixty-nine.	Legal proceedings	
Section two hundred and eighty-five	Works outside district.	
Sections two hundred and ninety-three to three hundred and four.	Powers of Local Government Board.	
Sections three hundred and five to three hundred and eleven, and three hundred and thirteen to three hundred and seventeen.	Miscellaneous.	
Sections three hundred and twenty-seven to three hundred and thirty-seven, and three hundred and thirty-nine to three hundred and forty-one.	Saving clauses.	
The schedules so far as they are applicable.		
45 & 46 Vict. c. 23	- - - - -	Bye-laws for fruit pickers' lodgings.
46 & 47 Vict. c. 37	- - - - -	Support of sewers.
47 & 48 Vict. c. 12	- - - - -	Confirmation of bye-laws.
47 & 48 Vict. c. 74	- - - - -	Officers.
48 & 49 Vict. c. 53	- - - - -	Members and officers of local authority.
51 & 52 Vict. c. 52	- - - - -	Buildings in streets.
53 & 54 Vict. c. 17	- - - - -	Rating of orchards.

SCHED. 3.

THIRD SCHEDULE.

F O R M S.(a)

FORM A.(b)

FORM OF NOTICE REQUIRING ABATEMENT OF NUISANCE.

To [person causing the nuisance, or owner or occupier of the premises at which the nuisance exists, as the case may be].

Take notice that under the provisions of the Public Health (London) Act, 1891, the [describe the sanitary authority], being satisfied of the existence at [describe premises where the nuisance exists] of a nuisance being [describe the nuisance, for instance, premises in such a state as to be a nuisance or injurious or dangerous to health, or for further instance, a ditch or drain so foul as to be a nuisance or injurious or dangerous to health], do hereby require you within [specify the time] from the service of this notice to abate the same [and to execute such works and do such things as may be necessary for that purpose, or and for that purpose to specify any works to be executed],(c) [and the said [authority] do hereby require you within the said period to do what is necessary for preventing the recurrence of the nuisance, and for that purpose to &c.]

Where the nuisance has been abated, but is likely to recur, say, being satisfied that at &c. there existed recently, to wit, on or about the day of the following nuisance, namely [describe nuisance], and that although the said nuisance has since the last-mentioned day been abated, the same is likely to recur at the said premises, do hereby require you within [specify time], to what is necessary for preventing the recurrence of the nuisance [and for that purpose to &c.](d)

If you make default in complying with the requisitions of this notice [or if the said nuisance, though abated, is likely to recur], a summons will be issued requiring your attendance before a petty sessional court, to answer a complaint which will be made for the purpose of enforcing

the abatement of the nuisance, or prohibiting the recurrence thereof, SCHED. 3, or both, and for recovering the costs and penalties that may be incurred thereby.

Dated this day of 18 .

*Signature of officer {
of sanitary authority }*

(a) The forms in this schedule may be used with such variations as circumstances require. See section 130, *ante*, p. 220.
 (b) This notice is given under section 4, *ante*, p. 10.
 (c) The works to be executed need not be specified unless the sanitary authority think it desirable to do so. Section 4, sub-section (1), *ante*, p. 11.
 (d) As to this clause, see section 4, sub-section (2), *ante*, p. 17.

FORM B.

FORM OF SUMMONS.

Summons.

To *A.B.*, of [or to the owner or occupier of] [describe premises] situated [insert such description of the situation as may be sufficient to identify the premises].

County of, &c., { You are required to appear before [describe the to wit. } *petty sessional court*, at the court [or petty sessions] holden at on the day of next at the hour of in the noon, to answer the complaint this day made to me by that at the premises above mentioned [or at certain premises situated at No. in street in the parish of or insert any other such description or reference as may be sufficient to identify the premises], in the district of [describe the sanitary authority], the following nuisance exists [describe the nuisance and add, where the person causing the nuisance is summoned, and that the said nuisance is caused by the act, default, or sufferance of you, *A.B.*].

Where the nuisance is discontinued, but is likely to be repeated, say, to answer the complaint &c. that at &c. there existed recently, to wit, on or about the day of , the following nuisance

SCHED. 3. [describe the nuisance, and add, where the person causing the nuisance is summoned, and that the said nuisance was caused &c.], and although the said nuisance has since the said last-mentioned day been abated or discontinued, that the same or the like nuisance is likely to recur at the said premises.

Given under my hand and seal this _____ day of _____ 18_____

J.S. (L.S.)

This summons is issued under section 5, *ante*, p. 19.

FORM C.

FORM OF NUISANCE ORDER.

To A.B., of [or to the owner or occupier of] describe premises] situated [insert such description of the situation as may be sufficient to identify the premises].

County of, &c., } WHEREAS the said *A.B.* [or the owner or
to wit } occupier of the said premises within the meaning
of the Public Health (London) Act, 1891] has this day appeared
before me [or us, *describing the court*], to answer the matter of a
complaint made by &c. [*follow the words of complaint in
summons*] [or *in case the party charged do not appear, say,*]
Whereas it has been now proved to my (or our) satisfaction that a
summons has been duly served according to the Public Health (London)
Act, 1891, requiring the said *A.B.* [or the owner or occupier of the
said premises] to appear this day before me [or us] to answer the
matter of a complaint made by &c. that &c.]:

[Any of the following orders may be made or a combination of any of them as the case seems to require.]

Abate-
ment
Order.

Now on proof here had before me [*or us*] that the nuisance so complained of does exist at the said premises [*add, where the order is made on the person causing the nuisance*], and that the same is caused by the act, default, or sufferance of *A.B.*, I [*or we*], in pursuance of the Public Health (London) Act, 1891, do order the said *A.B.* [*or the said owner or occupier*] within [*specify the time*] from the service of this order according to the said Act [*here specify the*

nuisance to be abated, as, for instance, to prevent the premises being a nuisance or injurious or dangerous to health, or, for further instance, to prevent the ditch or drain being a nuisance or injurious or dangerous to health] [and state any works to be executed, as, for instance, to whitewash and disinfect the premises, or for further instance, to clean out the ditch].

And I [or we] being satisfied that, notwithstanding the said nuisance may be temporarily abated under this order, the same is likely to recur, do therefore prohibit the said A.B. [or the said owner or occupier] from allowing the recurrence of the said or a like nuisance [and for that purpose I or we direct the said A.B. or the said owner or occupier, here specify any works to be executed, as, for instance, to fill up the ditch].

Now, on proof here had before me [or us] that at or recently before the time of making the said complaint, to wit, on the nuisance so complained of did exist at the said premises, but that the same has since been abated [add, where the order is made on the person causing the nuisance, and that the nuisance was caused by the act, default, or sufferance of A.B.], yet, notwithstanding such abatement, I [or we] being satisfied that it is likely that the same or the like nuisance will recur at the said premises, do therefore prohibit [continue as in Prohibition Order, No. 1].

Now, on proof here had before me [or us] that the nuisance is such as to render the dwelling-house [describe the house] situated at [insert such a description of the situation as may be sufficient to identify the dwelling-house] unfit in my [or our] judgment for human habitation, I [or we] in pursuance of the Public Health (London) Act, 1891, do hereby prohibit the use of the said dwelling-house for human habitation.

Given under the hand and seal of me [or the hands and seals of us, describing the court].

This	day of	18	.
		J.S.	(L.S.)
		J.P.	(L.S.)

The above order is made under section 5, *ante*, p. 19.

It must specify the works to be executed if the defendant so requires or if the court considers it desirable. Section 5, sub-section (5), *ante*, p. 21.

It makes no provision for costs. Apparently it is contemplated that these will be received separately under section 11, *ante*, p. 27.

SCHED. 3.

FORM D.

FORM OF NUISANCE ORDER TO BE EXECUTED BY SANITARY AUTHORITY.

To the [describe the sanitary authority.]

County of, &c., } WHEREAS a complaint has been made by
 to wit. } that at certain premises situated at No.
 in street, in the parish of [or insert any other description or reference as may be sufficient to identify the premises] in the district of [describe the sanitary authority] the following nuisance exists [describe the nuisance].

And it has been now proved to my [or our] satisfaction that such nuisance exists, but that no owner or occupier of the premises, or person by whose act, default, or sufferance the nuisance is caused, is known or can be found [as the case may be]; Now I [or we] in pursuance of the Public Health (London) Act, 1891, do [continue as in any of the orders in Form C. with the substitution of the name of the sanitary authority for that of A.B. or the owner or occupier].

Given &c. (as in last form).

This form is under section 8, ante, p. 25.

FORM E.

WARRANT OF JUSTICE FOR ENTRY TO PREMISES.

WHEREAS A.B., being a person authorised under the Public Health (London) Act, 1891, to enter certain premises [describe the premises], has made application to me, C.D., one of Her Majesty's justees of the peace having jurisdiction in and for [describe the place], to authorise the said A.B. to enter the said premises, and whereas, I, C.D., am satisfied by information on oath that there is reasonable ground for such entry, and that there has been a refusal or failure to admit to such premises, and either that reasonable notice of the intention to apply to a justice for a warrant has been given, or that the giving of notice of the intention to apply to a justice for a warrant would defeat the object of the entry.

[or am satisfied by information on oath that there is reasonable cause to believe that there is on the said premises a contravention of the Public Health (London) Act, 1891, or of a bye-law made under that

Act, and that an application for admission or notice of an application **SCHED. 4.** for a warrant would defeat the object of the entry.]

Now, therefore, I, the said *C.D.*, do hereby authorise the said *A.B.* to enter the said premises, and if need be by force, with such assistants as he may require, and there execute his duties under the said Act.

Given &c. (as in last form).

This is the form of warrant to be issued by a justice *ante*, p. 186.

FOURTH SCHEDULE
ENACTMENTS REPEALED.
(a)

DEPARTMENT OF
HYGIENE
AND
PUBLIC HEALTH,
UNIVERSITY COLLEGE
LONDON.

Session and Chapter.	Title or Short Title.	Extent of Repeal.
26 Geo. 3, c. 71	An Act for regulating houses and other places kept for the purpose of slaughtering horses.	The whole Act.
57 Geo. 3, c. xxix.	An Act for better Paving, Improving, and Regulating the Streets of the Metropolis, and Removing and Preventing Nuisances and Obstructions therein.	Section fifty-seven so far as it relates to a cesspool; sections fifty-nine to sixty-one; section sixty-three; section sixty-four from "or shall throw" to "either of such pavements" as from the coming into operation of any bye-law made for the like object; sections sixty-seven and sixty-eight; and sections seventy-three and seventy-four as from the coming into operation of any bye-law made for the like object.

(a) See section 142, *ante*, p. 250.

SCHED. 4.

THE FOURTH SCHEDULE—*continued.*

Session and Chapter.	Title or Short Title.	Extent of Repeal.
2 & 3 Vict. c. 47 -	An Act for further improving the Police in and near the Metropolis.	Section sixty, from “or cause any offensive matter” to “so as to be a common nuisance,” as from the coming into operation of any bye-law made for the like object; and from “every occupier of a house” to “reference to this enactment.”
7 & 8 Vict. c. 87 -	An Act to amend the Law for regulating Places kept for Slaughtering Horses.	The whole Act.
16 & 17 Vict. c. 128.	An Act to abate the Nuisance arising from the smoke of Furnaces in the Metropolis and from Steam Vessels above London Bridge.	The whole Act as respects all places without as well as within London.
18 & 19 Vict. c. 116.	The Diseases Prevention Act, 1855.	The whole Act.
18 & 19 Vict. c. 120.	The Metropolis Management Act, 1855.	Section eighty-one; sections eighty-two to eighty-five, except so far as they relate to a drain or sewer, or any work or apparatus connected therewith; section eighty-six down to “defrayed under this Act;” sections eighty-eight, one hundred and three, and one hundred four; section one hundred and sixteen from “and also to cause” to

THE FOURTH SCHEDULE—*continued.*

SCHED. 4.

Session and Chapter.	Title or Short Title.	Extent of Repeal.
18 & 19 Vict. c. 120— <i>contd.</i>	The Metropolis Management Act, 1855.	the end of the section ; sections one hundred and seventeen, and one hundred and twenty-five ; section one hundred and twenty-six, as from the coming into operation of any bye-law made for the like object ; sections one hundred and twenty-seven to one hundred and twenty-nine, one hundred and thirty-two, one hundred and thirty-three, and one hundred and thirty-four ; section one hundred and ninety-eight from “ and to “ every such report ” to “ for their parish or “ district ; ” section two hundred and two from “ for the emptying ” to “ disposing of refuse ” as from the coming into operation of any bye-law made for the like object and ; section two hundred and eleven so far as regards any water-closet, privy, ashpit, or cesspool.
18 & 19 Vict. c. 121.	The Nuisances Removal Act for England, 1855.	The whole Act.
19 & 20 Vict. c. 107.	An Act to amend the Smoke Nuisances Abatement (Metropolis) Act, 1853.	The whole Act as respects all places without as well as within London.

SCHED. 4.

THE FOURTH SCHEDULE—*continued.*

Session and Chapter.	Title or Short Title.	Extent of Repeal.
23 & 24 Vict. c. 77.	An Act to amend the Acts for the Removal of Nuisances and the Prevention of Diseases.	The whole Act.
25 & 26 Vict. c. 102.	The Metropolis Management Amendment Act, 1862.	Sections forty-three and sixty-two; in section sixty-four the word "eighty-first," and the words "and eighty-sixth;" sections sixty-seven, seventy, eighty-nine, ninety-one, ninety-three, ninety-four, and ninety-five, and section one hundred and five, from "and all penalties" to "1855."
26 & 27 Vict. c. 117.	The Nuisances Removal Act for England (Amendment) Act, 1863.	The whole Act.
29 & 30 Vict. c. 41.	The Nuisances Removal (No. 1) Act, 1866.	The whole Act.
29 & 30 Vict. c. 90.	The Sanitary Act, 1866	The whole Act, except section forty-one.
31 & 32 Vict. c. 115.	The Sanitary Act, 1868	The whole Act.
32 & 33 Vict. c. 100.	The Sanitary Loans Act, 1869.	The whole Act.
33 & 34 Vict. c. 53.	The Sanitary Act, 1870	The whole Act.
35 & 36 Vict. c. 79.	The Public Health Act, 1872.	The whole Act.

THE FOURTH SCHEDULE—*continued.*

SCHED. 4.

Session and Chapter.	Title or Short Title.	Extent of Repeal.
37 & 38 Vict. c. 67.	The Slaughter-houses, &c. (Metropolis) Act, 1874.	The whole Act.
37 & 38 Vict. c. 89.	The Sanitary Law Amendment Act, 1874.	The whole Act, except so much of sections forty-six and forty-nine as relates to common lodging-houses.
38 & 39 Vict. c. 55.	The Public Health Act, 1875.	Section one hundred and eight from "In this section" to the end of the section; section one hundred and fifteen from "In this section" to the end of the section. Section two hundred and ninety-one, as respects the whole of the Port of London.
41 & 42 Vict. c. 74.	The Contagious Diseases (Animals) Act, 1878.	Section thirty-four.
42 & 43 Vict. c. 54.	The Poor Law Act, 1879.	Sections fifteen and sixteen.
43 & 44 Vict. c. lxx.	The Local Government Board's Provisional Orders Confirmation (Amersham Union, &c.) Act, 1880.	Section two.
46 & 47 Vict. c. 35.	The Diseases Prevention (Metropolis) Act, 1883.	The whole Act.
46 & 47 Vict. c. 53.	The Factory and Workshop Act, 1883.	Section seventeen, down to "for the district," being the first two sub-sections.

SCHED. 4.

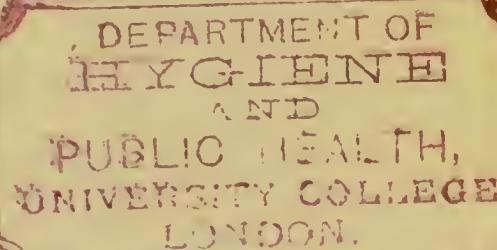
THE FOURTH SCHEDULE—*continued.*

Session and Chapter.	Title or Short Title.	Extent of Repeal.
47 & 48 Vict. c. 60.	The Metropolitan Asylum Board (Borrowing Powers) Act, 1884.	The whole Act.
48 & 49 Vict. c. 72.	The Housing of the Working Classes Act, 1885.	Section seven; and section nine from "This section shall apply" to "sanitary authority," being sub-section (6).
49 & 50 Vict. c. 32.	The Contagious Diseases (Animals) Act, 1886.	Section nine.
51 & 52 Vict. c. 41.	The Local Government Act, 1888.	Section forty-five; and section eighty-eight, from "Section one hundred and ninety-one" to the end of the section, being sub-section (c).
52 & 53 Vict. c. 56.	The Poor Law Act, 1889.	Section three, down to "common poor fund," being sub-sections (1), (2), and (3); and sections six and seven.
52 & 53 Vict. c. 64.	The Public Health Act, 1889.	Section one, from "and as regards" to the end of the section; and in section two the words "or of section fifty-two of the Sanitary Act, 1866."
52 & 53 Vict. c. 72.	The Infectious Disease (Notification) Act, 1889.	Section two, from "to every London" down to "Act and," being sub-section (a); sections ten and twelve; section sixteen, from "the Commissioners of Sewers" down to "Act, 1887," being sub-sections (a) and (b); and from "The expression 'London district'" down to "local authority is elected."

THE FOURTH SCHEDULE—*continued.*

SCHED. 4.

Session and Chapter.	Title or Short Title.	Extent of Repeal.
53 & 54 Vict. c. 34.	The Infectious Disease (Prevention) Act, 1890.	Section two, from "Local authority" to the end of the section; section three, from "to every London district" to "this Act; and"; and section five, down to "London dis- trict, and."
53 & 54 Vict. c. cexlii.	The London Council (General Powers) Act, 1890.	Sections twenty-two and twenty-four.



APPENDIX.

APPNDX. ORDERS of the Local Government Board at present in force in the Metropolis relating to Cholera, and to Medical Officers of Health :—

CHOLERA REGULATIONS—ORDER OF LOCAL GOVERNMENT BOARD.

(28th August, 1890.)

To ALL PORT SANITARY AUTHORITIES ;—

To all other Sanitary Authorities as herein defined ;—

To the Queen's Harbour Masters of Dockyard Ports ;—

To all Officers of Customs ;—

To all Medical Officers of Health of the Sanitary Authorities aforesaid ;—

To all Masters of Ships ;—

To all Pilots ;—

And to all others whom it may concern.

WHEREAS we, the Local Government Board, are empowered by section 130 of the Public Health Act, 1875, from time to time, to make, alter, and revoke such regulations as to us may seem fit, with a view to the treatment of persons affected with cholera, and preventing the spread of cholera, as well on the seas, rivers, and

waters of the United Kingdom, and on the high seas APPNDX. within three miles of the coasts thereof, as on land ; and may declare by what authority or authorities such regulations shall be enforced and executed ;

And whereas by section 2 of the Public Health Act, 1889, it is enacted that regulations of the Local Government Board made in relation to cholera and choleraic diarrhoea, in pursuance of section 130 of the Public Health Act, 1875, may provide for such regulations being enforced and executed by the officers of customs, as well as by other authorities and officers, and without prejudice to the generality of the powers conferred by the said section, may provide for the detention of vessels and of persons on board vessels, and for the duties to be performed by pilots, masters of vessels, and other persons on board vessels : Provided that the regulations, so far as they apply to the officers of customs, shall be subject to the consent of the Commissioners of Her Majesty's Customs ;

And whereas by certain Orders dated the 12th day of July, 1883, and an Order dated the 21st day of April, 1884, we prescribed rules and regulations with a view to the treatment of persons affected with cholera, and for preventing the spread of the disease, and it is expedient that such Orders should be revoked, and that further regulations should be prescribed as hereinafter mentioned, to which the Commissioners of Her Majesty's Customs have signified their consent so far as such regulations apply to the officers of customs :

Now therefore, we, the Local Government Board, do hereby revoke the aforesaid Orders, except in so far as they may apply to any proceedings now pending, and we do, by this our Order, and in exercise of the power conferred on us by the Public Health Act, 1875, as

APPNDX. amended and extended by the Public Health Act, 1889, and every other power enabling us in that behalf, make the following regulations, and declare that they shall be enforced and executed by the authorities hereinafter named :—

Definitions.

Art. 1. In this Order—

The term “ ship ” includes vessel or boat ;

The term “ officer of customs ” includes any person acting under the authority of the Commissioners of Her Majesty’s Customs ;

The term “ master ” includes the officer, pilot, or other person for the time being in charge or command of the ship ;

The term “ cholera ” includes choleraic diarrhoea ;

The term “ sanitary authority ” means every port sanitary authority and every urban or rural sanitary authority whose district includes or abuts on any part of a customs port, which part is not within the jurisdiction of a port sanitary authority ;

The term “ medical officer of health ” includes any duly qualified medical practitioner appointed by a sanitary authority to act in the execution of this Order ;

For the purposes of this Order,—

- (1) So much of a customs port abutting on an urban or rural sanitary district as is nearer to such district than to any other, and is not included within the jurisdiction of any port sanitary authority, shall be deemed to be within such district ;

(2) Every ship shall be deemed infected with cholera, in which there is or has been during the voyage or during the stay of such ship in a port in the course of such voyage, any case of cholera.

I. Regulations as to Detention by Officers of Customs.

Art. 2. If any officer of customs, on the arrival of any ship, ascertain from the master of such ship or otherwise, or have reason to suspect that the ship is infected with cholera, he shall detain such ship, and order the master forthwith to moor or anchor the same in such position as such officer of customs shall direct ; and thereupon the master shall forthwith moor or anchor the ship accordingly.

Art. 3. Whilst such ship shall be so detained, no person shall leave the same.

Art. 4. The officer of customs detaining any ship as aforesaid shall forthwith give notice thereof, and of the cause of such detention, to the sanitary authority of the place to which the ship shall be bound, or where the ship shall be about to call.

Art. 5. Such detention by the officer of customs shall cease as soon as the ship shall have been duly visited and examined by the medical officer of health ; or, if the ship shall, upon such examination, be found to be infected with cholera, as soon as the same shall be moored or anchored in pursuance of Article 10 of this Order.

Provided, that if the examination be not commenced within twelve hours after notice given as aforesaid, the ship shall, on the expiration of the said twelve hours, be released from detention.

II. Regulations as to Sanitary Authorities.

Art. 6. Every port sanitary authority and every other sanitary authority within whose district persons are likely to be landed from any ship coming foreign shall, as speedily as practicable, with the approval of the chief officer of customs of the port, fix some place where any ship may be moored, or anchored, for the purpose of Article 10; and shall make provision for the reception of cholera patients and persons suffering from illness removed under Articles 13 and 14. The place to be fixed as aforesaid, where any ship may be moored or anchored for the purpose of Article 10, shall be some place within the jurisdiction or district of the sanitary authority, unless the Local Government Board otherwise consent; in which case the place so fixed shall, for the purposes of this Order, be deemed to be within such jurisdiction or district.

Provided that, in the case of any dockyard port for which a Queen's harbour master has been appointed, the place where any ship shall be moored or anchored for the purpose of this Article shall from time to time be fixed by the port sanitary authority with the approval of the Queen's harbour master instead of with that of the chief officer of customs of the port.

Provided also, that where, in pursuance of any of the above-cited Orders, places have been duly fixed for the mooring or anchoring of ships for the like purpose, such places shall be deemed to have been so fixed in pursuance of this Order.

Art. 7. The sanitary authorty, on notice being given to them by an officer of customs, under this Order, shall forthwith cause the ship in regard to which such notice shall have been given, to be visited and examined by

their medical officer of health for the purpose of ascertaining whether she is infected with cholera. APPNDX. —

Art. 8. The medical officer of health, if he have reason to believe that any ship coming or being within the jurisdiction or district of the sanitary authority, whether examined by the officers of customs or not, is infected with cholera, shall, or if she have come from a place infected with cholera, may visit and examine such ship, for the purpose of ascertaining whether she is so infected; and the master of such ship shall permit the same to be so visited and examined.

Art. 9. If the medical officer of health on making such examination as aforesaid (whether under Article 7 or under Article 8), shall be of opinion that the ship is infected, he shall forthwith give a certificate in duplicate in the following form, or to the like effect, and shall deliver one copy to the master, and retain the other copy or transmit it to the sanitary authority. He shall also give to the Local Government Board information as to the arrival of the ship, and such other particulars as that Board may require.

Certificate.

— day of — 189 .

— SANITARY AUTHORITY OF —.

I hereby certify that I have examined the ship , of , now lying in the Port of [or detained at] and that I find that she is infected with cholera.

*Medical Officer of Health [or
Medical Practitioner ap-
pointed by the Sanitary
Authority].*

APPNDX. Art. 10. The master of any ship so certified to be infected with cholera shall thereupon moor or anchor her at the place fixed for that purpose under Article 6, and she shall remain there until the requirements of this Order have been duly fulfilled.

Art. 11. No person shall leave any such ship until the examination hereinafter mentioned shall have been made.

Art. 12. The medical officer of health shall, as soon as possible after any such ship has been certified to be infected with cholera, examine every person on board the same, and in the case of any person suffering from cholera or from any illness which the medical officer of health suspects may prove to be cholera, shall certify accordingly; and any person who shall not be so certified by him shall be permitted to land immediately on giving to the medical officer of health his name and place of destination, stating, where practicable, his address at such place.

The name and address of any such person shall forthwith be given by the medical officer of health to the clerk to the sanitary authority, and such clerk shall thereupon transmit to the local authority of the district in which the place of destination of such person is situate.

In this Article the term "local authority" means any urban or rural sanitary authority; and in the administrative county of London, the Commissioners of Sewers, the vestry under the Metropolis Management Act, 1855, of a parish in Schedule A., and the district board of a district in Schedule B. to that Act, as amended by the Metropolis Management Amendment Act, 1885, and the Metropolis Management (Battersea and Westminster) Act, 1887, and the Woolwich Local Board of Health.

Art. 13. Every person certified by the medical officer APPNDX. of health to be suffering from cholera shall be removed, if his condition admit of it, to some hospital or other suitable place appointed for that purpose by the sanitary authority; and no person so removed shall leave such hospital or place until the medical officer of health shall have certified that such person is free from the said disease.

If any person suffering from cholera cannot be removed, the ship shall remain subject, for the purpose of this Order, to the control of the medical officer of health; and the infected person shall not be removed from or leave the ship, except with the consent in writing of the medical officer of health.

Art. 14. Any person certified by the medical officer of health to be suffering from any illness which such officer suspects may prove to be cholera, may either be detained on board the ship for any period not exceeding two days, or be taken to some hospital or other suitable place appointed for that purpose by the sanitary authority, and detained there for a like period, in order that it may be ascertained whether the illness is or is not cholera.

Any such person who, while so detained, shall be certified by the medical officer of health to be suffering from cholera, shall be dealt with as provided by Article 13 of this Order.

Art. 15. The medical officer of health shall, in the case of every ship certified to be infected, give directions, and take such steps as may appear to him to be necessary, for preventing the spread of infection, and the master of the said ship shall forthwith carry into execution such directions as shall be so given to him.

APPNDX. Art. 16. In the event of any death from cholera taking place on board such ship while detained under Article 10, the master shall, as directed by the sanitary authority or the medical officer of health, either cause the dead body to be taken out to sea, and committed to the deep, properly loaded to prevent its rising, or shall deliver it into the charge of the said authority for interment; and the authority shall thereupon have the same interred.

Art. 17. The master shall cause any articles that may have been soiled with cholera discharges to be destroyed, and the clothing and bedding and other articles of personal use likely to retain infection which have been used by any person who may have suffered from cholera on board such ship, or who, having left such ship, shall have suffered from cholera during the stay of such ship in any port, to be disinfected or (if necessary) destroyed; and if the master shall have neglected to do so before the ship arrives in port, he shall forthwith, upon the direction of the sanitary authority or the medical officer of health, cause the same to be disinfected or destroyed, as the case may require; and if the said master neglect to comply with such direction within a reasonable time, the authority shall cause the same to be carried into execution.

Art. 18. The master shall cause the ship to be disinfected, and every article therein, other than those last described, which may probably be infected with cholera, to be disinfected or destroyed, according to the directions of the medical officer of health.

III.—*Flag to be hoisted by Ships infected with Cholera.*

Art. 19. The master of every ship infected with cholera shall, when within three miles of the coast of any part of England or Wales, cause to be hoisted the Commercial

Code Signal Q, being a yellow flag, under the National APPNDX. Ensign, and shall keep the same displayed during the whole of the time between sunrise and sunset.

Given under the Seal of Office of the Local Government Board, this twenty-eighth day of August, in the year one thousand eight hundred and ninety.

CHAS. T. RITCHIE, *President.*

L. S.

HUGH OWEN, *Secretary.*

NOTICE.—The Public Health Act, 1875, provides by section 130 that any person wilfully neglecting, or refusing to obey or carry out, or obstructing the execution of any regulation made under that section, shall be liable to a penalty not exceeding *Fifty Pounds.*

The following Circular Letter was sent out with the preceding Order :—

Local Government Board, Whitehall, S.W.,
30th August, 1890.

SIR,

I am directed by the Local Government Board to advert to section 130 of the Public Health Act, 1875, under which they are empowered to make regulations with a view to the treatment of persons affected with cholera, and preventing the spread of the disease both on land and water.

Doubts having arisen as to the extent of the powers conferred on the Board by this section as respects authorities and vessels, it was provided by the Public Health

APPNDX. Act, 1889 (52 & 53 Vict. c. 64), that regulations made by the Board in relation to cholera, in pursuance of the enactment above-mentioned, might provide for such regulations being enforced and executed by the officers of customs, as well as by other authorities and officers, and for the detention of vessels and of persons on board vessels, and for the duties to be performed by pilots, masters of vessels, and other persons on board vessels.

Under these circumstances the Board have thought it desirable to rescind the several Orders previously issued by them with a view to the treatment of persons affected with cholera, and preventing the spread of the disease, and to prescribe fresh regulations on the subject. Copies of the new Order are enclosed. It has been so framed as to apply to every port sanitary authority, as well as to every urban or rural sanitary authority, whose district includes or abuts on any part of a customs port, which part is not within the jurisdiction of a port sanitary authority. The necessity for issuing special Orders in certain exceptional cases has thus been obviated.

In the main the regulations prescribed by the new Order are the same as those previously in force, and the only points to which it appears requisite to draw attention are the following:—

Under Article 6 of the Order it is the duty of every port sanitary authority, and of every other sanitary authority within whose district persons are likely to be landed from any ship coming foreign, to fix some place where any ship certified to be infected with cholera may be moored or anchored. A proviso has been added to the Article to the effect that where, in pursuance of any of the Orders now revoked, places have already been fixed for the like purpose, such places shall be deemed to have been so fixed for the purpose of the Order now issued.

Article 9 requires the medical officer of health, after ^{APPENDIX.} examining a ship infected with cholera, to forward to the Board information as to the arrival of the ship, and such other particulars as they may require.

Under Article 12 any person on board a ship infected with cholera, who is not certified by the medical officer of health to be suffering from cholera, or from any illness which the medical officer of health may suspect to be cholera, is to be permitted to land on giving to the medical officer of health his name and the place of his destination, and also, where practicable, his address at such place. Having obtained this information, it will be the duty of the medical officer of health forthwith to report the same to the clerk to the sanitary authority, who is required thereupon to transmit the particulars to the local authority of the district in which the place of destination is situate. By the term "local authority" is meant any urban or rural sanitary authority, and in the administrative county of London the Commissioners of Sewers, the vestry or district board under the Metropolis Management Acts, and Woolwich Local Board of Health.

The Board think it important that a local authority should be made aware that a person has come into their district, who, though not himself certified as being infected with cholera, has come from an infected ship, and the Board trust that the requirements of this Article will be strictly complied with.

By Article 19, the master of every ship infected with cholera is required, when, within three miles of the coast, to cause to be hoisted the Commercial Code Signal Q, being a yellow flag, under the National Ensign, and to keep the same displayed during the whole of the time between sunrise and sunset.

APPNDX. The term "master," as will be seen from Article 1 of the Order, includes the officer, pilot, or other person for the time being in charge of the ship.

The Order is, of course, designed for the protection of the English shores from the introduction of cholera, and as cases of the disease are now occurring on the Continent, the Board trust that sanitary authorities on the sea-board will use the utmost vigilance in seeing that the provisions of the Order are efficiently and strictly complied with.

I am, Sir,

Your obedient servant,

HUGH OWEN, *Secretary.*

To the Clerk to the Sanitary Authority.

GENERAL ORDER (METROPOLIS).

(28th March, 1889.)

Regulations as to Medical Officers of Health.

To THE COMMISSIONERS OF SEWERS in the City of London ;—

To the Vestries and District Boards for the time being acting under the Metropolis Management Act, 1855, or any Act amending the same ;—

And to all others whom it may concern.

WHEREAS by paragraph (c) of section 88 of the Local Government Act, 1888, it is enacted as follows :—

Section one hundred and ninety-one of the Public Health Act, 1875, shall apply to the metropolis

in like manner as if the Commissioners of Sewers APPNDX. in the City of London, and every vestry of a parish in Schedule A., and district board of a district in Schedule B., to the Metropolis Management Act, 1855, or under any Act amending the same, were a local authority within the meaning of that section, and as if any medical officer hereafter appointed by such commissioners, vestry, or district board were appointed under the said Act, and the provisions of this Act with respect to the qualification of a medical officer or to the payment by a county council of a portion of the salary of a medical officer shall apply accordingly ;

And whereas by section 191 of the Public Health Act, 1875, it is enacted as follows :—

A person shall not be appointed medical officer of health under this Act unless he is a legally qualified medical practitioner ; and the Local Government Board shall have the same powers as it has in the case of a district medical officer of a union, with regard to the qualification, appointment, duties, salary, and tenure of office of a medical officer of health or other officer of a local authority, any portion of whose salary is paid out of moneys voted by Parliament, and may by order prescribe the qualification, and duties of other medical officers of health appointed under this Act ;

And whereas by sub-section (2) of section 24 of the said Local Government Act it is enacted that the council of each county shall from time to time as from the 31st day of March, 1889, pay out of the county fund and

APPENDIX. charge to the Exchequer Contribution Account the sum referred to in paragraphs (a) to (k) of that sub-section ; and paragraph (c) is as follows :—

(c.) They shall pay to every local authority, for any area wholly or partly in the county, by whom a medical officer of health or inspector of nuisances is paid, one-half of the salary of such officer, where his qualification, appointment, salary, and tenure of office are in accordance with the regulations made by Order under the Public Health Act, 1875, or any Act repealed by that Act ; but if the Local Government Board certify to the council that such medical officer has failed to send to the Local Government Board such report and returns as are for the time being required by the regulations respecting the duties of such officer made by Order of the Board under any of the said Acts, a sum equal to such half of the salary shall be forfeited to the Crown, and the council shall pay the same into Her Majesty's Exchequer, and not to the said local authority ;

And whereas it is enacted by sub-section (3) of section 24 of the said Local Government Act as follows :—

A reference in sections one hundred and eighty-nine and one hundred and ninety-one of the Public Health Act, 1875, to officers any portion of whose salary is paid out of moneys provided by Parliament shall be construed to refer to those officers in respect of whose salaries payment is made by a county council in pursuance of this section ;

And whereas by sub-section (2) of Section 109 of the APPNDX. said Local Government Act it is enacted as follows:—

Any enactment of this Act authorising anything to be done by the * * * Local Government Board * * * or relating * * to any matter required to be done for the purpose of bringing this Act into operation on the appointed day, shall come into effect on the passing of this Act :

Now therefore, we, the Local Government Board, in pursuance of the powers given to us by the statutes in that behalf, hereby order as follows in regard to medical officers of health who may be appointed on or after the first day of April, one thousand eight hundred and eighty-nine, by the Commissioners of Sewers in the City of London, or by any vestry or district board acting under the Metropolis Management Act, 1855, or any Act amending the same, the said commissioners and any such vestry or district board being hereinafter referred to as the "local authority":—

PART I.

In regard to the appointment, tenure of office, salary, and duties of every medical officer of health one-half of whose salary will be payable to the local authority by the London County Council in pursuance of the above-cited section 24 of the Local Government Act, 1888, we do hereby order:—

Appointment.

Art. 1. A statement shall be submitted to us, in a form to be supplied by us, showing the population and area of the district for which the local authority propose to

APPNDX. appoint a medical officer of health, together with the salary intended to be assigned to him, and such other particulars as may be prescribed by such form. If the local authority desire at any time to alter the district or make an appointment at a different salary a fresh statement shall be submitted to us.

Art. 2. When our approval has been given to the proposals contained in the statement so submitted to us, the local authority shall proceed to the appointment of the medical officer of health accordingly: Provided that if the local authority make the appointment before submitting such a statement as hereinbefore mentioned, the appointment shall be valid if approved by us.

Art. 3. An appointment of a medical officer of health shall not be made unless an advertisement specifying the district for which the appointment is to be made, together with the amount of salary proposed to be assigned, and the day fixed for such appointment, shall have appeared in some public newspaper, circulating in the district of the local authority, at least seven days before the day so fixed.

Art. 4. Every medical officer of health shall be appointed by a majority of the members present at a meeting of the local authority, and voting on the question, but such appointment shall be subject to our approval.

Art. 5. If a vacancy be about to occur on notice given by an officer of an intended resignation to take effect on a future day, or on notice given by the local authority in pursuance of Article 10 of this Order, or, in the case of an officer who holds his office for a specified term, by the term coming to an end, the local authority may provide for the continuance of such officer, or appoint his

successor, at any time subsequent to the giving of the APPNDX. notice, or within three calendar months next before the expiration of the term.

Art. 6. If in the case of an officer holding office at the date of this Order the local authority desire to appoint him under this Order, or if, in the case of an officer who may have been appointed under this Order for a specified term, the local authority should desire to renew his appointment for a further term, or otherwise in conformity with the provisions of this Order, it shall not be necessary for notice of the proposed appointment or renewal to be given by advertisement, if notice be given at one of the two ordinary meetings of the local authority next preceding the meeting at which the appointment is made or renewed.

Art. 7. If any officer be temporarily prevented by sickness or accident, or other sufficient reason, from performing his duties, the local authority may appoint a person qualified as aforesaid to act as his temporary substitute, and may pay him a reasonable compensation for his services; and it shall not be necessary in any such case that the foregoing articles of this Order shall be complied with, nor shall our approval be required to any such appointment, but no compensation shall be paid in any such case for a longer period than six weeks unless our consent be first obtained.

Tenure of Office.

Art. 8. Every officer shall continue to hold office for such period as the local authority may, with our approval, determine, or until he die, or resign, or be removed by such authority with our assent, or be removed by us, or be proved to be insane by evidence which we shall deem sufficient.

APPNDX. Art. 9. The local authority may, at their discretion, suspend any officer from the discharge of his duties, and shall, in case of every such suspension, forthwith report the same, together with the cause thereof, to us ; and if we remove the suspension of such officer by the local authority, he shall forthwith resume the performance of his duties.

Art. 10. Where any change in the extent of the district of any officer, or in his duties or salary, may be deemed necessary, and he shall decline to acquiesce therein, the local authority may, with our consent, but not otherwise, and after six months' notice in writing, signed by their clerk, given to such officer, determine his office.

Art. 11. A person shall not be appointed who does not agree to give one month's notice previous to resigning the office, or to forfeit such sum as may be agreed upon as liquidated damages.

Salary.

Art. 12. The local authority shall pay to every officer such salary as may be approved by us :

Provided always that the local authority, with our approval, may pay to any officer a reasonable compensation on account of extraordinary services, or other unforeseen or special circumstances connected with his duties or the necessities of the district for which he is appointed.

Art. 13. The salary of every officer shall be payable up to the day on which he ceases to hold the office, and no longer, subject to any deduction which the local authority may be entitled to make in respect of Article 11

of this Order ; and in case he shall die whilst holding such office, the proportion of salary (if any) remaining unpaid at his death shall be paid to his personal representatives :—

Provided that an officer who may be suspended, and who may, without the previous removal of such suspension, resign or be removed under Article 8 of this Order, shall not be entitled to any salary from the date of such suspension.

Art. 14. The salary assigned to every officer shall be payable quarterly, according to the usual feast days in the year, namely, Lady Day, Midsummer Day, Michaelmas Day, and Christmas Day ; but the local authority may pay to him at the expiration of every calendar month such proportion as they may think fit, on account of the salary to which he may become entitled at the termination of the quarter.

Art. 15. All salaries shall be considered as accruing from day to day, and be apportionable in respect of time accordingly, in pursuance of the provisions of “ The Apportionment Act, 1870.”

Duties.

Art. 16. The following shall be the duties of the medical officer of health in respect of the district for which he is appointed :—

- (1) He shall inform himself as far as practicable respecting all influences affecting or threatening to affect injuriously the public health within the district.

APPENDIX. (2) He shall inquire into and ascertain by such means as are at his disposal the causes, origin, and distribution of diseases within the district, and ascertain to what extent the same have depended on conditions capable of removal or mitigation.

(3) He shall by inspection of the district, both systematically and at certain periods, and at intervals, as occasion may require, keep himself informed of the conditions injurious to health existing therein.

(4) He shall be prepared to advise the local authority on all matters affecting the health of the district, and on all sanitary points involved in the action of the local authority ; and in cases requiring it, he shall certify, for the guidance of the local authority or of the justices, as to any matter in respect of which the certificate of a medical officer of health or a medical practitioner is required as the basis or in aid of sanitary action.

(5) He shall advise the local authority on any question relating to health involved in the framing and subsequent working of such bye-laws and regulations as they may have power to make.

(6) On receiving information of the outbreak of any contagious, infectious, or epidemic disease of a dangerous character within the district, he shall visit the spot without delay and inquire into the causes and circumstances of such outbreak, and in case he is not satisfied that all due precautions are being taken, he shall advise the persons competent to act as to the measures

which may appear to him to be required to APPNDX. prevent the extension of the disease, and, so far as he may be lawfully authorised, assist in the execution of the same.

- (7) Subject to the instructions of the local authority, he shall direct or superintend the work of the inspectors of nuisances in the way and to the extent that the local authority shall approve, and on receiving information from any inspector of nuisances that his intervention is required in consequence of the existence of any nuisance injurious to health or of any over-crowding in a house, he shall, as early as practicable, take such steps authorised by the statutes in that behalf as the circumstances of the case may justify and require.
- (8) In any case in which it may appear to him to be necessary or advisable, or in which he shall be so directed by the local authority, he shall himself inspect and examine any animal, carcase, meat, poultry, game, flesh, fish, fruit, vegetables, corn, bread, flour, or milk exposed for sale, or deposited for the purpose of sale or of preparation for sale, and intended for the food of man, which is deemed to be diseased, or unsound, or unwholesome, or unfit for the food of man ; and if he finds that such animal or article is diseased, or unsound, or unwholesome, or unfit for the food of man, he shall give such directions as may be necessary for causing the same to be seized, taken, and carried away, in order to be dealt with by a justice according to the provisions of the statutes applicable to the case.

APPNDX. — (9) He shall perform all the duties imposed upon him by any bye-laws and regulations of the local authority, duly confirmed where confirmation is legally required, in respect of any matter affecting the public health, and touching which they are authorised to frame bye-laws and regulations.

(10) He shall inquire into any offensive process of trade carried on within the district, and report on the appropriate means for the prevention of any nuisance or injury to health therefrom.

(11) He shall make the necessary inspections and otherwise perform the duties devolving on him under the Factory and Workshop Act, 1883, in regard to bakehouses.

(12) He shall attend at the office of the local authority or at some other appointed place, at such stated times as they may direct.

(13) He shall from time to time report in writing to the local authority his proceedings, and the measures which may require to be adopted for the improvement or protection of the public health in the district. He shall in like manner report with respect to the sickness and mortality within the district, so far as he has been enabled to ascertain the same.

(14) He shall keep a book or books, to be provided by the local authority, in which he shall make an entry of his visits, and notes of his observations and instructions thereon, and also the date and nature of applications made to him, the date and result of the action taken thereon and of

any action taken on previous reports ; and shall produce such book or books, whenever required, to the local authority.

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(15) He shall also prepare an annual report, to be made to the end of December in each year, comprising a summary of the action taken during the year for preventing the spread of disease, and an account of the sanitary state of his district generally at the end of the year. The report shall also contain an account of the inquiries which he has made as to conditions injurious to health existing in his district, and of the proceedings in which he has taken part or advised under any statute, so far as such proceedings relate to those conditions ; and also an account of the supervision exercised by him, or on his advice, for sanitary purposes over places and houses that the local authority have power to regulate, with the nature and results of any proceedings which may have been so required and taken in respect of the same during the year. It shall also record the action taken by him, or on his advice, during the year, in regard to offensive trades, and to factories and workshops. The report shall also contain tabular statements (on forms to be supplied by us, or to the like effect,) of the sickness and mortality within the district, classified according to diseases, ages, and localities.

(16) He shall give immediate information to us and to the London County Council of any outbreak of dangerous epidemic disease within the district. He shall also transmit to us a copy of each annual and of any special report, and any

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report made by him under the Artizans Dwellings Acts, 1868 to 1885, shall be deemed to be a special report.

- (17) He shall, at the same time that he transmits to us a copy of his annual report and of any special report, transmit a copy of such report to the London County Council.
- (18) In matters not specifically provided for in this Order, he shall observe and execute any instructions issued by us, and any lawful orders and directions of the local authority applicable to his office.
- (19) Whenever we shall make regulations for all or any of the purposes specified in section 6 of the Diseases Prevention Act, 1855, and shall declare the regulations so made to be in force within the district of the local authority, he shall observe such regulations, so far as the same relate to or concern his office under the local authority.

PART II.

In regard to the duties of every medical officer of health no part of whose salary will be payable to the local authority by the London County Council in pursuance of the above cited section 24 of the Local Government Act, 1888, we do hereby order:—

Art. 17. The following shall be the duties of the medical officer of health in respect of the district for which he is appointed;—

- (1) He shall, within seven days after his appointment, report the same in writing to us.
- (2) He shall perform all the duties prescribed by Article 16 of this Order for a medical officer of

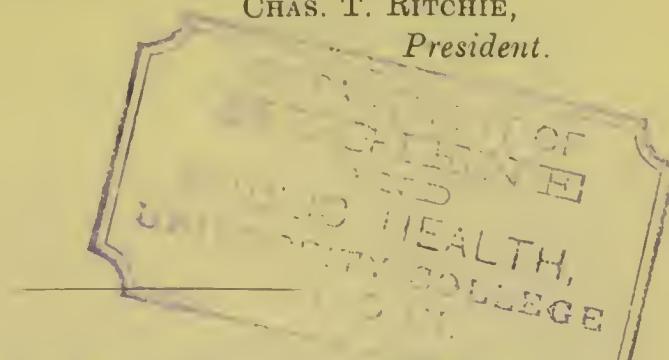
health in respect of whose salary a payment APPNDX. is made by the London County Council as aforesaid.

Given under the Seal of Office of the Local Government Board, this twenty-eighth day of March, in the year one thousand eight hundred and eighty-nine.



HUGH OWEN,
Secretary.

CHAS. T. RITCHIE,
President.



REGULATIONS AS TO MEDICAL OFFICER OF HEALTH : MAKING GENERAL ORDER APPLICABLE.

(21st October, 1889.)

WOOLWICH UNION.

Woolwich Local Board of Health District.

TO THE WOOLWICH LOCAL BOARD OF HEALTH ;—
And to all others whom it may concern.

WHEREAS by section 12 of the Infectious Disease (Notification) Act, 1889, it is enacted as follows :—

This Act shall apply to the Local Board of Woolwich in like manner as if it were a vestry under the Metropolis Management Act, 1855, and that Board shall appoint and pay a medical officer

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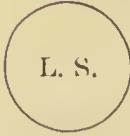
of health, and all enactments relating to medical officers of health within the administrative county of London shall apply to the medical officer of health of Woolwich;

And whereas, by an Order dated the 28th day of March, 1889, we, the Local Government Board, prescribed regulations in regard to medical officers of health who should be appointed on or after the 1st day of April, 1889, by the local authorities therein referred to, including any vestry acting under the Metropolis Management Act, 1855:

Now therefore, in pursuance of the powers given to us by the statutes in that behalf, we hereby order that the above-cited Order dated the twenty-eighth day of March, one thousand eight hundred and eighty-nine, shall apply to the Woolwich Local Board of Health, and to any medical officer of health appointed by them, as if that board were a vestry under the Metropolis Management Act, 1855.

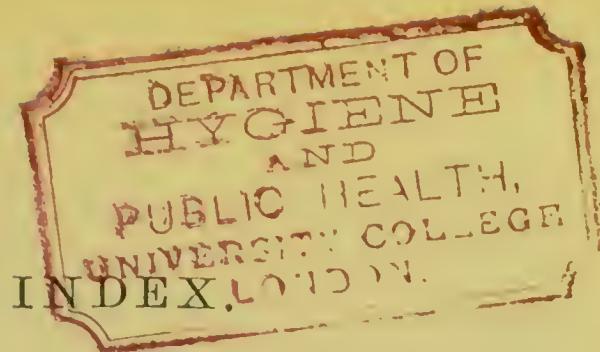
Given under the Seal of Office of the Local Government Board, this twenty-first day of October, in the year one thousand eight hundred and eighty-nine.

CHARLES T. RITCHIE,
President.



L. S.

ALFRED D. ADRIAN,
Assistant Secretary.



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